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# Ownership

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92-97

In re )  
Revision of ) MM Docket No. 91-140  
Radio Rules and Policies )

## REPORT AND ORDER

Adopted: March 12, 1992;

Released: April 10, 1992

By the Commission: Commissioner Quello issuing a statement; Commissioner Barrett dissenting in part and concurring in part and issuing a statement at a later date; Commissioner Duggan issuing a statement.

## TABLE OF CONTENTS

	<u>Paragraph</u>
I. INTRODUCTION. . . . .	1
II. BACKGROUND. . . . .	4
III. NATIONAL OWNERSHIP RULE	
A. Background. . . . .	14
B. Comments. . . . .	15
C. Discussion. . . . .	18
IV. LOCAL OWNERSHIP RULE	
A. Background. . . . .	31
B. Comments. . . . .	32
C. Discussion. . . . .	34
V. JOINT VENTURES	
A. Background . . . . .	58
B. Comments . . . . .	60
C. Discussion. . . . .	63
VI. ANNUAL REPORTING AND INFORMATION GATHERING. . . . .	68
VII. CONCLUSION. . . . .	69
VIII. ADMINISTRATIVE MATTERS. . . . .	70
IX. ORDERING CLAUSES. . . . .	74

Appendix A -- Regulatory Flexibility  
Appendix B -- List of Commenters  
Appendix C -- Rule Changes  
Appendix D -- Analysis of Selected Markets

## I. INTRODUCTION

1. This Report and Order resolves issues raised in the Notice of Proposed Rule Making in MM Docket 91-140, 6 FCC Rcd 3275 (1991) (Notice). The Notice proposed to relax the Commission's local and national radio ownership rules. The Notice also sought comment regarding whether to restrict joint ventures among stations, particularly time brokerage arrangements. A list of comments received in response to the Notice is attached as Appendix B.



2. In our 1984 proceeding relaxing the national ownership caps for radio and television, the Commission emphasized the explosion of media outlets since the advent of the ownership rules, the extremely fragmented structure of the broadcasting industry and the fact that viewpoint diversity is primarily a function of local, and not national, alternatives.<sup>1</sup> Similarly, in relaxing the radio duopoly rule in 1989, we again stressed the substantial increase in the number and variety of media outlets.<sup>2</sup> Since these two decisions, the marketplace trends identified therein have become even more pronounced. The number of radio stations has continued to grow, as has the number of non-radio outlets, such as cable, that compete with radio broadcasters for audience and advertising. In addition, as a direct result of this tremendous market fragmentation, many participants in the radio business are experiencing serious economic stress. More than half of all commercial radio stations lost money in 1990, and small stations in particular have been operating near the margin of viability for years.<sup>3</sup>

3. As discussed in detail below, we find that these changes in the radio marketplace warrant further revision of our radio ownership rules. Accordingly, we are today relaxing the national ownership cap and the local ownership rules, and are modifying our time brokerage policies. These actions reflect a balancing of competing concerns: on the one hand, the promotion of economic competition and program diversity by diversifying ownership and, on the other hand, the achievement of the demonstrable benefits resulting from group ownership, such as the promotion of program service diversity and the development of new broadcast services. Our action today supports our core objectives of economic competition and viewpoint diversity by recognizing that the existence of a vibrant marketplace is necessary to maximize those goals.

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<sup>1</sup> Report and Order in Gen. Docket No. 83-1009, 100 FCC 2d 17 (1984) (Ownership Report and Order). The Commission initially voted to phase out the national ownership caps. A relaxed national ownership cap for both radio and television was retained on reconsideration, primarily due to concerns specific to television station ownership. See Memorandum Opinion and Order in Gen. Docket No. 83-1009, 100 FCC 2d 74, 77 (1985) (Ownership Reconsideration Order) ("With one exception, the petitioners do not specifically question any of the determinations made with regard to the relaxation of the restrictions on multiple ownership of radio stations.").

<sup>2</sup> See First Report and Order in MM Docket No. 87-7, 4 FCC Rcd. 1723 (1989) (Contour Overlap Order).

<sup>3</sup> See Overview of the Radio Industry, Mass Media Bureau, January 1992, at 5 (Overview), which is included in the record of this Docket. This analysis of the radio industry is based on the following sources: FCC Annual Financial Reports; Robert J. Coen, McCann-Erickson, Inc.; NAB/BCFM Radio Financial Reports, 1984-1991; Duncan's Radio Market Guide; U.S. Bureau of Economic Analysis; U.S. Bureau of Labor Statistics.



## II. BACKGROUND

4. As observed in the Notice, the radio industry has become increasingly diverse and competitive over the past decade. Today, there are over 11,000 radio stations in the United States. The number of FM radio stations has grown dramatically -- from 4,374 in 1980 to 6,077 in 1991, an increase of 39 percent. The number of AM radio stations has also increased -- from 4,589 in 1980 to 4,985 in 1991.<sup>4</sup> As of mid-February 1992, an additional 274 AM and 1,350 FM stations were authorized but are not yet operational.<sup>5</sup> The radio industry of 1992 is thus extremely fragmented, with no single entity holding any measure of nationwide market power.<sup>6</sup>

5. At the same time, the number of non-radio outlets competing with radio for audiences and advertising revenues has also increased substantially. Popular music, a mainstay of radio programming, is now available through several cable networks, most notably MTV and VH-1 (available to 56.6 and 41.2 million households, respectively).<sup>7</sup> In addition, the number of 24-hour per day cable radio network entities has risen from approximately six in 1984 to 15 today, offering roughly 100 separate audio channels.<sup>8</sup> Of these network entities, three digital networks have recently emerged, each of which currently provides about 30 channels of CD quality music.<sup>9</sup> On the video front, the number of television stations has grown from

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<sup>4</sup> Broadcasting Yearbook, 1982, at A-7; FCC News Release, January 3, 1992, Mimeo No. 21284.

<sup>5</sup> These figures represent stations for which construction permits have been granted but no license application has been filed. Of the 1,350 FM construction permits, 230 are for non-commercial stations.

<sup>6</sup> Department of Justice guidelines provide a means for evaluating industry concentration. When evaluating proposed mergers, the Department of Justice considers an industry unconcentrated if the post-merger level of concentration results in an Herfindahl-Hirschman Index (HHI), a standard measure of industry concentration, below 1000. (An industry or market of 10 equally-sized firms would have an HHI of 1000.) Based on revenue, the HHI for the commercial radio industry, on a nationwide basis, was 49 in 1990, having declined from 77 in 1980. We also note that an antitrust analysis is merely one factor that the Commission will weigh in evaluating the public interest in possible modification of the multiple ownership restrictions. See, e.g., para. 50, infra.

<sup>7</sup> Cable Television Developments, NCTA, Sept. 1991.

<sup>8</sup> Id. at 26c - 30c.

<sup>9</sup> These three services are Digital Music Express (DMX), which is available to one million cable homes on 40 systems; Digital Cable Radio (DCR), with a potential audience of one million subscribers on 25 cable systems; and Digital Planet, which is currently being tested on three systems. Cablevision, December 2, 1991, at 24. Digital cable radio networks



a total of 1,019 in 1980 to a total of 1,494 today. Cable has also seen considerable growth, with national cable penetration increasing from 25 percent in 1980 to 64 percent today and the number of national basic cable programming networks growing from 34 to at least 80 during the same time period.<sup>10</sup>

6. In response to this intense inter- and intra-industry competition, radio station programming has become increasingly diverse and targeted. In the mid-1970s, for example, one follower of the radio industry classified stations according to eight major formats. Today, it tracks 35 major formats and more than 20 minor formats.<sup>11</sup> In addition, national radio services such as cable radio and digital audio broadcasting are poised to change the face of the radio industry by the turn of the century.

7. With this increased diversity has come a degree of market fragmentation that has dramatically changed financial conditions for the radio industry. Significantly, these changes are more than simply cyclical. Between 1980 and 1985, radio revenues grew, on average, 11 percent annually, which was more than twice as fast, in real terms, as the Gross National Product. Between 1985 and 1990, however, the growth rate of radio revenues dropped almost in half to, on average, six percent,<sup>12</sup> slower than the economy as a whole. Revenue growth per station dropped from 3.3 percent annually in 1980-85 to 0.2 percent in 1985-90 -- one tenth the annual growth rate of the Gross National Product for the same period.<sup>13</sup> This slowdown in revenue growth, combined with the increase in the number of stations over the past decade, resulted in per station revenue growth, on average, of approximately three percent per year in real terms from 1980 through 1985. From 1985 through 1990, real per station revenue remained virtually unchanged.<sup>14</sup> Indeed, in the first three quarters of 1991 alone, reported radio industry revenues dropped by three percent.<sup>15</sup> In addition, while estimated industry operating profit grew from 1980 to 1990, operating profits on a per-station

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eventually will be able to offer as many as 250 channels.

<sup>10</sup> FCC Office of Plans and Policy Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996, 4044, 4049 (1991) (OPP Paper); NBC Comments in response to Notice of Inquiry in MM Docket No. 91-221, 6 FCC Rcd 4961 (1991); Tentative Decision in BC Docket No. 82-345, 94 FCC 2d 1019, 1058 (1983).

<sup>11</sup> This information was provided by Katz Radio Group, an advertising representative firm.

<sup>12</sup> This is a compound annual average rate of growth.

<sup>13</sup> See Overview at Attachment 6.

<sup>14</sup> Id.

<sup>15</sup> Broadcasting, November 4, 1991 at 51.





basis have plummeted since reaching their peak in 1988.<sup>16</sup> This decline, combined with rising programming, sales and general and administrative costs, has led to a sharp decrease in operating margins (operating profits as a percent of sales) over the past five years for the average radio station.<sup>17</sup>

8. Further, radio's share of the local advertising market was flat throughout the 1980s even as the respective shares of directly competitive media, most notably local cable, increased. Radio's share of the local advertising market remained at 12 percent from 1980 to 1990.<sup>18</sup> Television's share, however, increased from 12.5 percent to 14.1 percent during the same period.<sup>19</sup> The percentage increase in cable's share was even more significant, rising from 0.03 percent (\$8 million) in 1980 to 0.7 percent in 1990 (almost \$400 million).<sup>20</sup> This increase reflects the fact that local cable systems are increasingly aggressive in competing for local advertising dollars, and radio is often the direct target for that competition.<sup>21</sup> All of these statistics combined reveal that the competitive forces affecting radio are well established, and the trends that have emerged since at least 1985 indicate that radio's economic base will continue to erode as fragmentation grows.

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<sup>16</sup> Estimated overall industry operating profit (earnings before taxes and interest) grew at 2.3%, compounded annually, in real terms from 1980 to 1990. In current dollar terms, average AM operating profits have dropped 50% and average FM operating profits have dropped 36% since 1988. See Overview at 5.

<sup>17</sup> Average operating margins for FM stations fell from 12.4% in 1987 to 8.3% in 1990; full-time AMs declined from 10.1% to 8.1%, and daytime AMs dropped from 9.5% to virtual breakeven. Id.

<sup>18</sup> Robert J. Coen, McCann-Erickson, Inc.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> See, e.g., Communications Corporation Comments at 10 ("the explosive growth and development of cable has severely impacted radio and television broadcasters"). A survey conducted by the New York State Broadcasters Association, placed in the record through ex parte comments of Association President Joseph A. Reilly, indicated that Association members responding to the question "What or who was your biggest competitor five years ago?" identified print media (61 percent) and other radio stations (24 percent). When asked "Who is your biggest competitor today?" 40 percent said print media and 29 percent said cable television. When asked "Who do you think will be your biggest competitor in five years?" 39 percent said cable television and 26 percent said other radio (including DAB). See Letter of Joseph A. Reilly to Chairman, Federal Communications Commission (Feb. 5, 1992).



9. Moreover, the overall industry figures mask the fact that the outlook for small radio stations, which comprise the bulk of the radio industry, is particularly bleak. Industry revenue and profit are overwhelmingly concentrated in large radio stations. Of almost 10,000 commercial radio stations nationwide, the top 50 revenue producing stations, .5 percent of all stations, accounted for more than 11 percent of total radio revenue in 1990 and an estimated 50 percent of total industry profit.<sup>22</sup> At the same time, more than half of all stations, primarily those with less than \$1 million in sales, lost money.<sup>23</sup>

10. Under these circumstances, we conclude that radio's ability to serve the public interest in the spirit of the Communications Act is substantially threatened. The industry's ability to function in the "public interest, convenience and necessity" is fundamentally premised on its economic viability. For example, Group W notes that many stations have had to cut back significantly on staff and programming investment as they struggle to conserve resources in today's highly competitive media environment.<sup>24</sup> Similarly, Crown Broadcasting, EBE Communications and KQWB assert that numerous radio stations have reduced their news budgets and are foregoing public affairs programming to cut costs.<sup>25</sup> Moreover, according to Commission records, almost 300 radio stations are currently silent; more than half of them ceased broadcasting in the last 12 months.<sup>26</sup> Stations cannot serve the public interest if they are not on the air.

11. We are further persuaded that these trends are unlikely to be reversed. The communications industry will undoubtedly become more diverse, competitive and complex as new technologies are developed. We accordingly believe that it is time to allow the radio industry to adapt to the information marketplace of the 1990s, free of artificial constraints that prevent valuable efficiencies from being realized. Relaxing our radio ownership restrictions will grant operators greater opportunity to combine administrative, sales, programming, promotion, production and other functions, as well as to share studio space and equipment. Not only will such efficiencies enable radio stations to improve their competitive standing; they may also play a significant part in improving the diversity of programming available to the public. Indeed, using NAB data we can estimate the possible magnitude of the savings and benefit to the public if greater consolidation were to take place. In 1990, the industry spent an estimated \$1.7 billion on general and administrative expenses.<sup>27</sup> If 10 percent of

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<sup>22</sup> See Overview at 5.

<sup>23</sup> Id.

<sup>24</sup> Group W Comments at 2.

<sup>25</sup> Crown Comments at 3; EBE Comments at 2; KQWB Comments at 1.

<sup>26</sup> See Overview at 5.

<sup>27</sup> Id. at 6.



these costs were eliminated via consolidation, the \$170 million in savings would raise industry profit by 30 percent.<sup>28</sup> If local stations decided to invest half the savings in programming, this would immediately boost per station programming investment -- which has grown at only 1 percent yearly in real terms since 1987 -- by 5 percent, and the remaining savings would still raise industry profitability by 15 percent.<sup>29</sup>

12. Accordingly, we today adopt new ownership regulations for the radio industry that will permit greater consolidation without threatening competition or diversity at either the national or local level. Specifically, the rules adopted here relax the national ownership caps to allow a single licensee to own up to 30 AM stations and 30 FM stations nationwide. Further, we modify the local ownership rule to permit a single owner to own an increased number of stations within a local radio market, depending on market size. In all but the smallest markets, a 25 percent pre-acquisition cap on the combined audience share of all owned stations will also be applied. Simulcasting on commonly owned stations in the same service within a market will be limited to 25 percent of the broadcast schedule. In addition, if a station licensee programs more than 15 percent of the time of another station in its market, that station, and its market share, will be counted against the brokering station's permissible ownership levels in determining its compliance with our revised radio ownership rules.<sup>30</sup> We also will require that all time brokerage contracts be placed in the public inspection files of the stations involved, and that local time brokerage agreements be filed with the Commission within 30 days of execution.

13. To monitor the effects of these modified rules, the Commission's Mass Media Bureau is directed to prepare an annual report assessing the impact of the new rules on competition, diversity and minority ownership. As part of its report, the Bureau will specifically track the market shares of local and national combinations. Annual evaluation of these data will enable the Commission to take appropriate action should any one entity threaten to dominate the national radio market or a particular local radio market. See Section VI, infra.

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<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> This is not intended to suggest that the programmer acquires any rights with respect to management or control of the station in question. To the contrary, our rules require the licensee to maintain control over station management and ultimate programming decisions, regardless of any time brokerage agreements that may exist. Our new rule will merely use time brokerage restrictions as a means of preventing circumvention of the ownership rules through local time brokerage arrangements.



### III. NATIONAL OWNERSHIP RULE

#### A. Background

14. The present national ownership rule permits an individual or entity to own up to 12 AM and 12 FM stations. A single owner may own up to 14 stations per service if at least two of the stations are minority-controlled. 47 C.F.R. § 73.3555(d). The Notice proposed a number of options for relaxing the national rule. Some of those options were numerically-based, for example increasing the 12-12 rule to some higher number. Other alternatives were based on the stations' combined national audience reach or the stations' combined local market shares. Still other options were based on market size in that they proposed to permit greater combination of stations in larger, more diverse markets. The Notice also questioned whether AM and FM radio should be treated as a single aural service and sought comment on how any relaxation of the national rule would affect minority ownership of radio stations.

#### B. Comments

15. The commenters overwhelmingly support relaxation of the national ownership rule, with most suggesting that the restriction be eliminated entirely.<sup>31</sup> Commenters agree with the Notice that increased group ownership provides broadcasters with economies of scale, thereby strengthening the radio industry.<sup>32</sup> Commenters further contend that the communications industry as a whole, as well as the national radio marketplace, are so competitive and diverse that it would be virtually impossible for a few groups to control the dissemination of information and ideas. If undue control arises, commenters assert, antitrust laws are an appropriate safeguard against monopolization of the national market.<sup>33</sup> Commenters also

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<sup>31</sup> See, e.g., Blackburn & Co. Comments at 2; CBS Comments at 10-17; Communications Corporation Comments at 2, 9-13; du Treil, Lundin & Rackley Comments at 2; Fairmont Broadcasting Comments at 2-7; Freedom of Expression Foundation Comments at 2-7; Marsh Broadcasting Comments at 2-7; Universal Broadcasting Comments at 2-8; Willis Broadcasting Comments at 2-7; Fuller-Jeffrey Comments at 1-2; Goodrich Comments at 1; Infinity Comments at 5-12; James Ingstad Comments at 4-5; Robert E. Ingstad Comments at 4-5; KQWB Comments at 1; Murray Communications Comments at 1; NAB Comments at 3-4, 11; Salem Communications Comments at 3. In addition to these formal comments, the Commission received more than 100 ex parte comments during the first two months of 1992; the majority of those strongly advocated elimination.

<sup>32</sup> See, e.g., James Ingstad Comments at 4; NAB Comments at 15; Mid-West Family Stations Comments at 1-3.

<sup>33</sup> See, e.g., Fuller-Jeffrey Comments at 2; Infinity Comments at 15; NAB Comments at 11.





argue that diversity and competition are local, not national, concerns, so national ownership should not be limited.<sup>34</sup>

16. The few commenters opposed to relaxing the national ownership rule contend that the Commission has not collected data sufficient to evaluate the effect of the 1984 increase in the ownership limit.<sup>35</sup> They also assert that increasing the limit would be contrary to the Commission's past pronouncements that diversity and competition are to be preserved, and contrary to the First Amendment principles underlying the Commission's rulemaking authority.<sup>36</sup> These commenters are particularly concerned that relaxing the national limit will inhibit ownership by minorities and independent broadcasters by pricing them out of the radio market, and that increased group ownership will lead to the demise of locally produced news and public affairs programming.<sup>37</sup> They note that the 14-station minority limit was established to encourage non-minority broadcasters to invest in minority-controlled stations, but state that it has been ineffective in achieving this goal.<sup>38</sup> These commenters thus request that the Commission further study the problem of minimal minority and female participation in broadcasting before increasing the ownership limit. Further, several commenters argue that if the overall limit is not abolished, the minority cap should be set higher than the overall limit, or minority owners should be permitted to own an unlimited number of radio stations.<sup>39</sup>

17. In terms of implementation, many commenters advocating relaxation of the national rule assert that the limit should remain numerically based, and offer a number of specific suggestions as to what numbers should be used.<sup>40</sup> Most commenters oppose use of an audience reach or market share

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<sup>34</sup> See, e.g., FTC Reply at 20-23; Mid-West Family Stations Comments at 3-4; NAB Comments at 12-13.

<sup>35</sup> See, e.g., AWRT Comments at 4-5; NABOB Comments at 1-4; TRAC Comments at 5-11; UCC Comments at 2-5.

<sup>36</sup> See, e.g., John R. Byrne Comments at 1; UCC Comments at 12; United States Catholic Conference Comments at 3-5.

<sup>37</sup> See, e.g., AWRT Comments at 6-7; TRAC Comments at 29-30.

<sup>38</sup> See, e.g., AHORA Comments at 3; NABOB Comments at 2; NAACP Reply at 3-4; TRAC Comments at 36.

<sup>39</sup> See, e.g., Ragan A. Henry Comments at 1-2; NAACP Comments at 6.

<sup>40</sup> See, e.g., CapCities/ABC Comments at 10-13 (would permit ownership of at least 30 stations overall); Bonneville International Corporation Comments at 5-6 (suggests that the limit first be increased from 12 to 18 stations per service and then to 24 stations per service after three years); Crawford Broadcasting Comments at 5-6 (advocates limit of 30 radio stations overall, no more than 12 of which may be FM); Degree Communications Comments at 1 (supports limit of 20 stations per service); Group W Comments at 5-7



approach, arguing that such a rule would be prohibitively complex to administer.<sup>41</sup> They contend that audience reach is difficult to calculate and that ratings continually fluctuate and are subject to dispute. Some commenters also contend that use of market share data would be a disincentive for stations to achieve high ratings because the rule would preclude extensive consolidation of high rated stations.<sup>42</sup> Most commenters also oppose a market rank analysis, arguing that such an approach would favor large markets to the detriment of smaller markets, where the financial strain on the radio industry is most apparent.<sup>43</sup> Nonetheless, some of these commenters are amenable to using market rank as a less intrusive alternative to retaining national ownership limits, arguing that very large and diverse markets could not possibly be monopolized.<sup>44</sup> In addition, most commenters assert that the Commission should treat AM and FM stations equally for purposes of the national rule, arguing that AM and FM stations in the same market face the same economic conditions and competitive challenges from other media.<sup>45</sup> On the other hand, a few commenters contend that because AM stations are in worse economic health than FM stations and are generally technically inferior, they should be regulated less strictly.<sup>46</sup>

### C. Discussion

18. Based on our careful review of the record in this proceeding and our own analyses, we conclude that the national ownership caps should be relaxed to permit ownership of up to 30 AM stations and 30 FM stations nationwide. As detailed above, the increase in radio and other mass media outlets we observed when we last reviewed the national ownership limitations has continued unabated. The number of radio stations, especially FM stations, has grown dramatically, and there are currently over 11,000 radio

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(supports limit of 25 stations per service); Sillerman Companies Comments at 1 (supports limit of 25 stations per service); Robert T. Wertine Comments at 2-3 (advocates raising AM cap to 15 stations, 18 if they are minority-controlled, and lowering FM cap to 8 stations, 10 if they are minority-controlled, or establishing a maximum coverage area per owner, whichever is more restrictive).

<sup>41</sup> See, e.g., Bonneville Communications Corporation Comments at 6; Group W Comments at 7-8; NAB Comments at 7-8.

<sup>42</sup> See, e.g., CapCities/ABC Comments at 12; Group W Comments at 8.

<sup>43</sup> See, e.g., Bonneville Communications Corporation Comments at 6-7; Group W Comments at 8; James Ingstad Comments at 5.

<sup>44</sup> See, e.g., CBS Comments at 17-20.

<sup>45</sup> See, e.g., CapCities/ABC Comments at 8-9; Group W Comments at 6-7; Mid-West Family Stations Comments at 4-5.

<sup>46</sup> See, e.g., Crawford Broadcasting Comments at 4-6; du Treil, Lundin & Rackley Comments at 2; Nationwide Comments at 5.



facilities nationwide. At the same time, the industry has witnessed a significant increase in the number of competing audio services delivered by cable systems, including music video offerings such as MTV and VH-1 and cable radio network services providing numerous separate audio channels. In addition, non-radio sources competing with radio owners for audience and advertising revenues have also multiplied, with the number of television stations growing from 883 to 1,489 since 1985 and cable penetration increasing from 41 percent to 64 percent since 1984.<sup>47</sup>

19. In view of these competitive realities, the likelihood of a single firm or group of firms exercising dominance over the radio industry through ownership of multiple radio stations at the national level is extremely remote. Indeed, when judged by Department of Justice standards, the industry is highly unconcentrated, garnering only a 49 HHI<sup>48</sup> — far below the 1,000 HHI that marks the boundary between concentrated and unconcentrated industries. When coupled with the proliferation of radio and non-radio outlets over the past eight years, these figures persuade us that the national ownership limits can safely be relaxed at this time without adversely affecting competition and diversity in the national marketplace of ideas.

20. In this regard, we stress our earlier conclusions that competition and diversity are relevant primarily at the local, not the national, level. As we noted in 1984, the basic factors that determine the broadcast advertising market (i.e., stations' ratings, degree of competition in the listening area and demographics) are all local, and radio stations rarely compete outside their markets.<sup>49</sup> The local nature of radio competition is further highlighted by the fact that in 1990, more than 75 percent of total radio advertising expenditures were made in the local spot market.<sup>50</sup> Similarly, with respect to viewpoint diversity, the immediate frame of reference for most consumers is the local area in which they live and work. In other words, listeners in San Francisco, St. Louis and Philadelphia each perceive program and viewpoint diversity in terms of the ideas available to them locally, regardless of what ideas are available in other broadcast markets. As we indicated in 1984, "[f]or an individual member of the audience, the richness of ideas to which he is exposed turns on how many diverse views are available within his local market."<sup>51</sup>

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<sup>47</sup> See OPP Paper, 6 FCC Rcd at 4011; FCC News Release, January 3, 1992, Mimeo No. 21284; Overview at 2.

<sup>48</sup> See note 6, supra.

<sup>49</sup> Ownership Report and Order at 41.

<sup>50</sup> Robert J. Coen, McCann-Erickson, Inc. About five percent of radio advertising represents national network expenditures, and 20 percent represents national spot revenues.

<sup>51</sup> Ownership Report and Order at 37.



21. We are also persuaded that relaxation of the national caps may actually enhance viewpoint diversity. Evidence adduced in this and earlier proceedings indicates that greater consolidation could increase the variety of programming available to the public, including local news and public affairs programming. In the 1984 Ownership Report and Order, for example, the record evidence indicated that commonly owned stations, on average, offer more public service programming and, because they generally have higher ratings on local news programming, might well respond to viewer demand for news more effectively than stations not commonly owned. Contrary to the notion that group owners are more apt to present monolithic viewpoints, we received evidence that group-owned stations take editorial positions and engage in basic reporting and coverage decisions on an autonomous basis. We concluded that diversity of viewpoint in local news reporting and editorializing on local issues can exist alongside a group ownership structure and that "it is possible to have greater viewpoint diversity than there is ownership diversity."<sup>52</sup> The Commission found similar evidence and reached similar conclusions in the 1989 proceedings regarding the one-to-a-market and duopoly rules.<sup>53</sup>

22. The record accumulated in this proceeding corroborates these findings. For example, Infinity Broadcasting, a large radio group owner, submits that each of its stations makes independent decisions with respect to news, public affairs and other programming.<sup>54</sup> Similarly, CBS asserts that editorial policy is always established by individual CBS stations.<sup>55</sup> In addition, a recent study by the Associated Press Broadcast News Service found that radio stations in larger markets have larger news staffs, run longer newscasts and believe news to be more important than stations in smaller markets.<sup>56</sup> These results were not compiled in terms of large versus small stations, or group owned versus independent stations. Nonetheless, the fact that large markets are characterized by higher average station revenues suggests that this higher investment in news is a function of the benefits of scale, and portends that relaxation of the national rule will provide the public with more news and informational programming. We note, moreover, our long-held conclusion that all stations are obligated under the public interest standard of the Communications Act to serve their community of license, including providing programming that deals with issues of local concern.

23. In view of the foregoing, we believe the time has come to relax our national ownership restrictions. In so doing, we note that our goal is not

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<sup>52</sup> Ownership Report and Order at 34.

<sup>53</sup> Contour Overlap Order, 4 FCC Rcd 1723 (1989); Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd. 1748 (1989) (One-to-a-Market Order).

<sup>54</sup> Infinity Comments at 16-17.

<sup>55</sup> CBS Reply at 4.

<sup>56</sup> AP Broadcast News Service Study, September 1991.





to introduce wholesale restructuring of the broadcasting industry before the ramifications of significant change can become apparent.<sup>57</sup> Rather, we intend to promote competition and diversity by modifying our ownership rules in a manner that directly addresses the long-term economic changes that are endemic to the radio industry. Thus, while a clear majority of commenters support elimination of the national rules, we instead choose the more measured approach of relaxing the caps from 12 AM and 12 FM to 30 AM and 30 FM, limiting a single owner to approximately one-half of one percent of the total number of licensed stations. Although this new limit is clearly more restrictive than the balance of parties would have preferred, it is consistent with a substantial body of comments in the record. For example, Group W and the Silberman companies propose a 25 AM/25 FM limit, Bonneville International Corporation proposes a 24 AM/24 FM limit and CapCities/ABC proposes a limit of at least 30 stations overall.<sup>58</sup>

24. Our selection of the 30/30 limit reflects our agreement with the vast majority of commenters who argue that we should treat AM and FM the same for purposes of our national ownership rules. The efficiencies to be gained from greater consolidation can only be maximized to improve the radio industry as a whole if the national limits are relaxed for both the AM and FM services. As several commenters observe, the AM and FM services both face economic challenges, and the Commission traditionally has treated them alike for purposes of the ownership rules. Moreover, to the extent the AM service presents unique problems, they are more appropriately addressed by efforts specifically focused on AM improvement.<sup>59</sup>

25. The 30-station limit is calculated to permit beneficial consolidation in the industry while minimizing the likelihood of undue concentration, even using the most pessimistic assumptions. It is important to note that the theoretical maximum level of concentration, or "worst case scenario," is not a particularly meaningful measure. Under the 12/12 limit, for example, ownership levels rose to less than ten percent of what was theoretically possible.<sup>60</sup> Even if the "worst case" were to occur under the

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<sup>57</sup> Ownership Report and Order at 55.

<sup>58</sup> Our selection of the 30 AM/30 FM limit is based on our careful review of the record, our own analyses of industry data and our long-standing experience regulating the radio industry. See, e.g., ALLTEL Corp. v. FCC, 838 F.2d 551, 559 (D.C. Cir. 1988); Storer Broadcasting Co. v. FCC, 240 F.2d 55, 56 (D.C. Cir. 1956).

<sup>59</sup> See, e.g., Report and Order in MM Docket No. 87-267, 6 FCC Rcd 6273 (1991) (AM Expanded Band Order).

<sup>60</sup> As noted previously, under the 12/12 limits, the theoretical minimum number of group owners would be 415, yet we estimate that today there are roughly 5,200 such owners nationwide. Thus, although there theoretically could be a minimum of 166 group owners under the new 30/30 limits, we fully expect that there will continue to be a vastly greater number of owners at the national level.



new rules, however, and the top ten existing group owners each acquired the maximum of 60 stations in the top 18 revenue-generating markets, they would control 30 percent of industry revenue. Yet, in this extremely unlikely scenario, the radio industry would still be far less concentrated than the cable and newspaper businesses, where the top ten firms accounted for 55 percent and 45 percent of the national market, respectively, in 1990. In addition, in 1990 dollars, the average revenues of each of those top ten radio group owners would be approximately \$265 million, which is consistent with the 1990 revenues that the three largest revenue-producing radio groups are already achieving.<sup>61</sup> Notably, revenues of \$265 million represent less than three percent of radio's total revenue in 1990.<sup>62</sup> Thus, even under the theoretically maximum concentration of the largest groups in the top markets -- a scenario we find highly unlikely given the historic ownership patterns in the industry and our experience under the 12/12 rule -- the radio industry under a 30/30 rule would still be less concentrated at the national level than other competitive media, and revenues averaged across the 10 largest theoretical owners would be close to the revenues already achievable under the present regime.

26. We emphasize that minority ownership remains a central concern and an important goal of the Commission under the revised national rules. Although it has increased over the past decade,<sup>63</sup> minority ownership in the radio industry remains at a disturbingly low level. We are thus concerned by the arguments of minority broadcasters that substantial relaxation of the national ownership rule could nullify the numerical advantage currently afforded to minority-controlled stations, who are permitted to own up to 14, rather than 12, radio stations per service. We note, however, that the two largest radio groups numerically in the United States are minority-controlled, and that the immediate effect of the rule change will be to allow these groups to expand beyond the 14/14 cap.<sup>64</sup>

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<sup>61</sup> See Overview at Attachment 2 (\$232 million for CapCities/ABC, \$217 million for CBS, \$200 million for Westinghouse).

<sup>62</sup> Id.

<sup>63</sup> For example, according to NABOB, the number of black-owned radio stations rose from 30 in 1976 to 182 in 1991 -- a 506 percent increase in a period when the number of commercial stations overall grew by 29 percent. (Since 1981, black-owned radio stations increased by 29 percent, from 141 to 182, while overall stations grew by 20 percent). NABOB Comments at 3-4. Comments filed jointly by NAACP/LULAC/NBMC stated that the number of minority-owned broadcast stations (including all minorities, and both radio and TV) rose from 60 in 1978 to 281 in 1991, an increase of 368 percent during a period when the number of TV and radio stations together grew by 27 percent. NAACP Comments at 3.

<sup>64</sup> The three largest group radio owners are: (1) Willis Broadcasting Corp., which has interests in 13 AM and 13 FM stations; (2) Ragan Henry, who has interests in 9 AM and 12 FM stations; and (3) Capital Cities/ABC, Inc., which has interests in 11 AM and 10 FM stations. CBS Broadcast Group has



27. Other minority organizations commenting in this proceeding have observed that the present 14-station minority limit has not been effective in attracting investment from non-minority broadcast interests in minority-controlled stations.<sup>65</sup> We agree. In addition, our experience has been that other policies intended to spur minority entry into broadcasting have generally been more effective in advancing this important goal. For example, the tax certificate policy enables the seller of a radio or television station to defer the gain realized on a sale if it sells to a minority broadcaster. The distress sale policy permits a broadcast licensee whose license has been designated for revocation hearing to sell its station, prior to the commencement of a hearing, to a minority broadcaster at a price substantially below its fair market value.<sup>66</sup> In addition, minority ownership is favorably considered in comparative hearings.

28. We also believe that access to capital is the most critical limitation on minority participation in the industry, and we thus concurrently propose to address that problem directly. Our recent Capital Formation Notice<sup>67</sup> seeks comment on several issues concerning the availability of capital in the broadcasting industry to minority and non-minority concerns alike. That Notice also proposes to afford passive investor status to Small Business and Minority Enterprise Small Business Investment Companies (SBICs and MESBICs), thereby substantially raising the attribution benchmark applicable to their broadcast investments. In addition, as discussed below at Section VI, the Commission will conduct an annual review of ownership trends in the industry under the new rules with particular attention to their impact on minority ownership. We will not hesitate to revisit this issue if minority ownership is adversely affected by the revised ownership regime.

29. In sum, we conclude that the record supports a relaxation of the national radio ownership rules. The national radio marketplace, which is

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interests in 8 AM and 12 FM stations, but has at least temporarily acquired an interest in a 13th FM station. Willis is minority-controlled and Ragan Henry is a minority individual.

<sup>65</sup> See, e.g., AHORA Comments at 3; NABOB Comments at 2; NAACP Reply at 3-4; TRAC Comments at 36. We note that such investment has not occurred in radio, while it has occurred in television to the extent that Home Shopping Network, a non-minority licensee, has taken advantage of the higher limit or the single majority shareholder provision of the attribution rules to acquire interests in two minority-controlled television stations in addition to its 12 non-minority-controlled television stations. See NAACP Reply at 3.

<sup>66</sup> Ordinarily, a licensee is prohibited from selling, assigning or otherwise disposing of its interest until the issues have been resolved in the licensee's favor.

<sup>67</sup> See Notice of Proposed Rule Making and Notice of Inquiry in MM Docket No. 92-51, FCC 92-96 (released Apr. 1, 1992) (Capital Formation Notice).



itself extremely competitive and diverse, is but one of the many mass media now vying for audience and advertising revenue. We believe the freedom to own more radio stations nationwide will offer radio broadcasters the opportunity to enjoy greater efficiencies that redound to the benefit of the public and affirmatively serve our competition and diversity goals. As noted previously, the savings associated with greater scale can be used to improve programming while also boosting industry profitability, which our rules now may artificially depress.

30. Indeed, it may be argued that the evidence supports the contention of most commenters that the national limit could be repealed entirely without threatening diversity and competition. In an abundance of caution, however, we choose instead to increase the national limit to 30 AM stations and 30 FM stations. Moreover, we stress that we will remain vigilant toward the possibility, however unlikely, that future developments may threaten our diversity and competition goals. We thus stand ready to re-evaluate the national caps adopted today if the Mass Media Bureau's annual report or other data reveal that such a review is warranted.

#### IV. LOCAL OWNERSHIP RULE

##### A. Background

31. The local radio ownership rule, or contour overlap rule, prohibits an individual or entity from owning two AM stations with overlapping 5 mV/m contours, or two FM stations with overlapping 3.16 mV/m contours. 47 C.F.R. § 73.3555(a). In addition, Commission rules require that the 5 mV/m contour of an AM station and the 3.16 mV/m contour of an FM station encompass the entire principal community to be served. 47 C.F.R. §§ 73.24(j), 73.315(a). Taken together, these rules prohibit ownership of two AM or two FM stations licensed to the same principal city, although AM/FM combinations within the same city are permitted. The Notice proposed to permit ownership of any number of stations in an area if their combined local market audience shares are at or below a given percentage. The Notice alternatively proposed to implement the above proposal in conjunction with a numerical cap, and questioned whether same-service, commonly owned stations in the same community should be permitted to simultaneously broadcast the same programming.

##### B. Comments

32. Commenters are generally amenable to retaining some level of regulation of local ownership, and note that the local market is more important than the national market for purposes of diversity and competition.<sup>68</sup> Many commenters suggest that the local limit should be established at two AM and two FM stations per market, with combinations resulting in more than two AMs and two FMs evaluated on a case-by-case

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<sup>68</sup> See, e.g., CBS Comments at 6.





basis.<sup>69</sup> They argue that there is no reason to allow AM/FM combinations but not AM/AM or FM/FM combinations. Other commenters propose that the local rule be eliminated, arguing that most markets are unconcentrated and that competition from other media is constantly increasing.<sup>70</sup> In addition, commenters tend to agree with the Notice that greater combination will not harm diversity because, while competing stations might try to reach the same core audience, a single owner might try to program different stations to appeal to different audience segments in order to maximize its total audience size.<sup>71</sup> Most commenters also agree that group ownership leads to significant efficiencies, such as use of common studio equipment facilities, and some suggest that the prevalence of AM/FM combinations indicates that group ownership is efficient.<sup>72</sup> On the other hand, some commenters contend, as they did regarding the national ownership rule, that the Commission has not been presented with sufficient data to justify relaxing the local rule.<sup>73</sup> They assert that permitting more local market combinations will undermine competition and viewpoint diversity by pricing independent broadcasters out of the industry.<sup>74</sup>

33. - Most commenters support use of a numerical formula as opposed to audience ratings based data for calculating local ownership. Commenters assert, as they did regarding the national rule, that a ratings based approach would discourage group owners from achieving high ratings (i.e., lower ratings would leave an owner room to purchase additional stations), and that ratings data are unreliable.<sup>75</sup> If a ratings based approach is used, however, most commenters addressing the issue agree with the Notice that

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<sup>69</sup> See, e.g., Bonneville International Corporation Comments at 7; CBS Comments at 27; FTC Reply at 15-16; Group W Comments at 9; see also Testimony of Richard Ferguson, Representing the Radio Operators Caucus, before Senate Communications Subcommittee, March 11, 1992.

<sup>70</sup> See, e.g., Ragan A. Henry Comments at 2; James Ingstad Comments at 6; Robert E. Ingstad Comments at 6; Sillerman Companies Comments at 4-5; 3-D Communications Corporation Comments at 5.

<sup>71</sup> See, e.g., CBS Comments at 21; FTC Reply at 17-18; Group W Comments at 11-12.

<sup>72</sup> See, e.g., FTC Reply at 9.

<sup>73</sup> See, e.g., TRAC Comments at 5-8; UCC Comments at 13-15.

<sup>74</sup> See, e.g., HVS Partners Comments at 11.

<sup>75</sup> See, e.g., Bonneville International Corporation Comments at 7-10; CapCities/ABC Comments at 13-19; Communications Corporation Comments at 15; Fuller-Jeffrey Comments at 2; Mid-West Family Stations Comments at 6-7; NAB Comments at 1-10; Sheboygan Comments at 2-4; Sillerman Companies Comments at 4.



divestiture should not be compelled if stations' ratings rise.<sup>76</sup> On the other hand, some commenters offer specific suggestions for basing local ownership caps on ratings information.<sup>77</sup> In addition, several commenters support a market rank approach, arguing that larger markets are so diverse and competitive that it would be impossible for one owner to inappropriately dominate such a market.<sup>78</sup> They assert that a market rank approach is superior to use of ratings because market rank information is easily verifiable. Commenters opposing use of market rank data, however, assert that such an approach would prejudice small markets.<sup>79</sup> Again, like their arguments concerning the national rule, most commenters assert that AM and FM should be treated alike for purposes of the local rule.<sup>80</sup> Most of the few commenters that address the issue also support unrestricted simulcasting.<sup>81</sup>

### C. Discussion

34. When the Commission first applied local ownership restrictions to the radio service in 1938,<sup>82</sup> it stressed that those limits were intended to promote competition in both the economic marketplace and the marketplace of ideas. As discussed previously, we remain committed to protecting these bedrock concerns of competition and diversity. We also believe that, although radio is but one of many sources of entertainment and information available in any given market, some ownership restriction continues to be appropriate at the local level.

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<sup>76</sup> See, e.g., EBE Communications Comments at 5-6; Ragan A. Henry Comments at 2-3; Salem Communications Comments at 3-4.

<sup>77</sup> See, e.g., American Media Comments at 2-3 (30 percent of audience); EBE Communications Comments at 5-6 (15 percent of audience); Ragan A. Henry Comments at 2-3 (25 percent of audience).

<sup>78</sup> See, e.g., Blackburn & Company Comments at 2; CapCities/ABC Comments at 15-16; CBS Comments at 27-29 (supports rank approach for ownership of more than two stations in a market); Crawford Broadcasting Comments at 2-4; Degree Communications Comments at 1; Group W Comments at 9-13.

<sup>79</sup> See, e.g., Bonneville International Corporation Comments at 7-10.

<sup>80</sup> See, e.g., CBS Comments at 2-3; Demaree Media Comments at 1; EBE Communications Comments at 3-4; Fisher Broadcasting Comments at 5; Group W Comments at 6-7; James Ingstad Comments at 5-6; Robert E. Ingstad Comments at 5-6; Mid-West Family Stations Comments at 4-5; Salem Communications Comments at 2; 3-D Communications Comments at 4.

<sup>81</sup> See, e.g., Communications Corporation Comments at 16-17; Crawford Broadcasting Comments at 4; EBE Communications Comments at 7; contra AHORA Comments at 6-7; Panhandle Comments at 5.

<sup>82</sup> Genesee Radio Corp., 5 FCC 183 (1938).



35. The record in this proceeding persuades us, however, that our commitment to competition and diversity is not threatened by moderate relaxation of the local ownership rules in a manner consistent with promoting the strong public interest in a viable radio industry. The radio marketplace of the first half of the twentieth century was far more concentrated than today, with listeners enjoying few options in many areas of the country and no options at all in others. Alternative media outlets, such as television and cable, were just barely on the technological horizon. The explosion of radio and other media since that time has provided local consumers with a wide range of media choices and presented radio owners with multiple competitive challenges.<sup>83</sup> Indeed, the average listener now has access to a plethora of radio voices in the local market -- the top 25 television markets have, on average, at least 50 commercial radio stations; markets 76 to 100 have, on average, at least 23 commercial radio stations; and even markets 176 to 200 have, on average, at least 9 commercial radio stations.<sup>84</sup> When coupled with the numerous other media outlets now available to local listeners, these figures make clear that the local marketplace is far more competitive and diverse -- indeed, has been virtually transformed -- since the local ownership rules were first promulgated.

36. In 1989, when relaxing the contour overlap rule, we recognized the need to adapt our rules to the changing marketplace and described many of the market developments noted herein. Although it was beyond the scope of that proceeding, many commenters urged us to completely eliminate the AM and FM duopoly rules.<sup>85</sup> In this proceeding, the Notice proposed substantial modifications to those rules in view of the increasing competition in the media marketplace and the continuing decline of the radio service over the past few years. We believe that these developments support further relaxation of the local ownership rules.

37. Indeed, the record evidence convinces us that our existing rules may actually hamper competition and diversity by making it unnecessarily difficult for stations to compete in today's thriving marketplace. By artificially denying stations efficiencies that could be realized through consolidation of facilities, managerial and clerical staffs, sales, bookkeeping, promotion, production, news and other aspects of station operation, the local ownership restrictions increase the costs of doing business at a time when cost-savings may well be critical to survival. The record suggests that, without the ability to realize efficiencies through consolidation, stations have turned to other measures to remain competitive. Commenters note that in many cases, cost reduction strategies have led to decreased news and programming expenditures.<sup>86</sup> Commenters also point out

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<sup>83</sup> See paras. 5-6, supra.

<sup>84</sup> See Overview at 9.

<sup>85</sup> See 4 FCC Rcd at 1729.

<sup>86</sup> See, e.g., Crown Broadcasting Comments at 2-3; EBE Communications Comments at 2; Group W Comments at 2; KQWB Comments at 1.



that, due to systemic economic pressures in the industry, many stations have turned to joint venture arrangements, such as time brokerage, to curb costs.<sup>87</sup>

38. The record further indicates that industry profits and programming investments would increase if radio stations were able to enjoy the efficiencies stemming from relaxed local ownership rules. As discussed previously, even if consolidation resulted in only a 10 percent reduction in costs, significant savings could be realized.<sup>88</sup> The potential of achieving a 10 percent cost reduction, moreover, is confirmed by our own experience with the one-to-a-market rule, which generally prevents a single owner from acquiring a radio station and a television station in the same locality.<sup>89</sup> In recent cases for waivers of that rule, applicants have demonstrated that joint operation of television and radio stations whose contours overlap can result in cost savings of 10 percent or more, regardless of market size. For example, in P-N-P Broadcasting, Inc., 4 FCC Rcd 5596 (1989), involving a small market broadcaster, the savings attributed to joint operation represented better than 12 percent of the total costs of running the commonly-owned television station. Similarly, in Tulsa 23, 5 FCC Rcd 727 (1990), involving a medium-market operation, the applicants stated that joint ownership would reduce the operating costs of the stations by approximately 10 percent. In addition, in Great American Television and Radio Co., Inc., 4 FCC Rcd 6347 (1989), involving the 28th and 29th TV ADI markets, the applicants documented cost savings between 11 and 17 percent as a result of joint operation of two radio stations.<sup>90</sup> We believe it entirely reasonable to expect that the potential efficiencies available to radio-radio combinations will be at least as great, relative to total station costs, as those available to these radio-TV combinations.<sup>91</sup>

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<sup>87</sup> See, e.g., Blackburn & Company Comments at 2-3; CapCities/ABC Comments at 19; Crown Broadcasting Comments at 5; Degree Communications Comments at 2; Great American Comments at 4; HVS Partners Comments at 2-4; Gary Burns Comments at 2-3; KQWB Comments at 1-2; South Fork Comments at 11-16.

<sup>88</sup> See para. 11, *supra*.

<sup>89</sup> 47 C.F.R. § 73.3555(b). Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd. 1741 (1989), provides that the Commission will look favorably on requests for waiver of the one-to-a-market rule if the stations are in the top 25 television markets and include 30 other separately controlled broadcast stations.

<sup>90</sup> These savings resulted from sharing facilities or services such as: (1) tower and transmitter building; (2) studios and offices; (3) business departments and managers; (4) administrative and management services; (5) accounting and legal services; and, (6) engineering backup staffs.

<sup>91</sup> FTC specifically asserts that common ownership of radio stations leads to greater efficiencies, including cost savings in administration and overhead, promotion, equipment and programming. In this regard, it submits a





39. Significantly, cost savings stemming from joint operation are likely to be invested in capital improvements and better programming that will inure to the benefit of the listening public. Commenters confirm that stations will spend more money on programming if greater station consolidation were permitted. CBS, for example, notes that in a variety of past proceedings, the Commission has recognized that multiple station ownership can result in operating efficiencies that translate into improved service.<sup>92</sup> Group W asserts that group ownership is likely to result in more diverse programming in the marketplace and increased service to specific audience groups.<sup>93</sup> Nationwide opines that "[o]nly healthy stations have the means and will to promote the public interest in a meaningful way."<sup>94</sup>

40. In view of the increasingly fragmented nature of the local radio marketplace, the economic strain experienced by many of today's radio broadcasters, and the sizeable savings that can stem from joint operation of same-market radio facilities, we conclude that our local radio ownership rules should be relaxed in order to help radio licensees better compete in the mass-media marketplace. In crafting new local rules, the record established that there are three factors that may be considered relevant: (1) market size; (2) the number of commonly owned stations in the market; and (3) the audience share resulting from a proposed acquisition. For the reasons detailed below, we are adopting rules which take into account each of these factors, as follows:

In markets with fewer than 15 radio stations, a single licensee will be permitted to own up to three stations, no more than two of which are in the same service, provided that the owned stations represent less than 50 percent of the stations in the market. Common ownership of one AM/FM combination will continue to be allowed in any event.

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study that concludes that the average price paid for an existing combination of radio stations in the same market would exceed by about 20 percent the price that would be paid for the same stations if those stations were operated on a stand-alone basis. See FTC Reply at 9-15, Appendix at 26 (Anderson and Woodbury, "Efficiencies from Common Ownership of Local Broadcast Media: The Case of AM and FM Radio Stations," February 1991). FTC points out that the study is limited to AM/FM combinations within a market, but asserts that it is reasonable to expect that same-service combinations could yield similar efficiencies. FTC also indicates that a case-by-case analysis of market conditions at the time the Commission reviews a new application or an application for transfer or assignment should be adequate to prevent the creation of undue market power.

<sup>92</sup> CBS Comments at 4 & n.5. CBS cites the One-to-a-Market Order, the Contour Overlap Order, and the Ownership Report and Order.

<sup>93</sup> Group W Comments at 12.

<sup>94</sup> Nationwide Comments at 4.



In markets with 15 to 29 radio stations, a single licensee will be permitted to own up to two AM stations and two FM stations, provided that the combined audience share of the stations does not exceed 25 percent.

In markets with 30 to 39 radio stations, a single licensee will be permitted to own up to three AM stations and two FM stations, provided that the combined audience share of the stations does not exceed 25 percent.

In markets with 40 or more radio stations, a single licensee will be permitted to own up to three AM stations and three FM stations, provided that the combined audience share of the stations does not exceed 25 percent.

41. The Numerical Caps. The heart of our new rule is the numerical cap on station ownership in local markets. This numerical cap will enable radio broadcasters to jointly own several stations in a market and enjoy the efficiencies flowing from such common ownership. At the same time, the cap will preclude a single owner or group of owners from threatening to dominate the radio market through the acquisition of a large percentage of stations in any given location. As the record establishes, competitive realities are substantially different in markets of different sizes. Therefore, we have adopted a numerical cap which varies based on the number of radio stations competing in the market.

42. We stress that our selected caps reflect a measured approach to local radio ownership. As with our one-to-a-market waiver standard, we believe it prudent to craft an ample safety net to preserve our core diversity and competition concerns. For example, we believe that our decision to allow licensees in markets with 14 or fewer stations to acquire one more station than they may currently own<sup>95</sup> represents an extremely modest relaxation of our existing rules and properly balances our interests in this area. Furthermore, a tiered approach, whereby acquisition of a lesser number of stations is allowed as the number of stations in the market decreases, is consistent with policies by which we have given closer scrutiny to broadcast combinations in markets with fewer media outlets out of a concern that diversity and economic competition could be more easily undermined in such markets.<sup>96</sup> After balancing considerations of market size with our core concerns of diversity and competition, we believe the particular market size "tiers" we have chosen represent a reasonable accommodation of the competing concerns. We note that, as a practical matter, approximately 83 percent of the top 260 markets will be governed by either the 2 AM/2FM rule (57 percent) advocated by the majority of commenters, or by the more restrictive three-station rule (26 percent)

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<sup>95</sup> In recognition of our interest in permitting greater consolidation where necessary to promote a viable, competitive marketplace, we have long allowed one licensee to own an AM and an FM station in the same market.

<sup>96</sup> See, e.g., One-to-a-Market Order, 4 FCC Rod at 1752-53.



applicable in smaller markets. Our 3 AM/3FM limit will apply in only approximately 4 percent of the top 260 markets, and our 3 AM/2 FM rule in approximately 13 percent of the top 260 markets.<sup>97</sup>

43. We further note that even if, in the wake of our decision, the industry were to consolidate up to the new limits (a highly unlikely possibility), the numerical caps would provide a powerful safeguard against concentration that would threaten our core concerns. A market-by-market analysis of the maximum potential consolidation that could occur in the top 260 Arbitron markets under the new numerical caps indicates that in 96.2 percent of markets there would be at least four separate owners; in 84.2 percent there would be at least five separate owners; and in nearly two-thirds of all markets (65.8 percent) there would be at least six such owners. In 26.2 percent of rated radio markets (which include nearly 60 percent of the audience in rated markets), there would be at least nine separate owners.<sup>98</sup> These projections do not include consideration of audience share caps, which will act as a further limit on consolidation.

44.- The numerical limits also provide a significant safeguard against the possibility that one licensee could acquire a substantial market share, as measured by audience rating data, in any particular local market. In this regard, because stations in the FM service may in particular markets have an advantage over stations in the AM service, or vice versa, we have adopted separate limits for each. This approach will tend to prevent one entity from putting together a powerful combination of stations in a single service that may enjoy an advantage over stations in a different service. We believe that this is particularly important with respect to the FM service, which in many markets enjoys significant competitive advantages.<sup>99</sup>

45. Just as the particular market tiers chosen are designed to provide an ample safety net, we also intend to take a conservative approach in applying the new numerical caps. The relevant radio market for purposes of the local ownership rule will be the designated radio metro market recognized by Arbitron for stations assigned to such markets. In order to determine in which market "tier" a station falls, the Commission will calculate the number of stations in the market based only on stations rated in the market.<sup>100</sup>

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<sup>97</sup> See James Duncan, American Radio, Spring 1991; American Radio Small Market Report 1991.

<sup>98</sup> Id.

<sup>99</sup> Indeed, on a nationwide basis, the AM service garners only 23 percent of today's radio audience. See Overview at 2.

<sup>100</sup> Arbitron's minimum reporting standard provides that to be reported, a station (1) must have received five or more minutes of listening in a quarter-hour in at least ten in-tab Metro diaries; (2) must have a Metro Cume rating of 0.5 or greater; and (3) must have a Metro Average Quarter-Hour rating of 0.05 or greater. See, e.g., Arbitron, Radio Market Report, Washington, D.C., Fall 1991, at iii.



Thus, both non-commercial stations and stations with extremely small audience shares will generally be excluded from the station total, even though these stations are often significant factors in maintaining both competition and viewpoint diversity in particular markets.

46. For stations located outside designated market areas, the appropriate "competitive market" will be defined in terms of principal community contours. Specifically, we will define the radio market for commercial stations not assigned to designated markets as that area encompassed by the principal community contours (i.e., predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m for FM stations) of the overlapping stations proposing to have common ownership. The number of stations in the market will be determined based on the principal community contours of all commercial stations whose principal community contours overlap or intersect the principal community contours of the commonly-owned stations. For example, if Station A and Station B have overlapping principal community contours and Station A proposes to acquire Station B, the number of stations in the market includes not only Stations A and B, but also all commercial stations whose principal community contours overlap with those of Station A or Station B.<sup>101</sup> Because this standard is based upon the existence of overlapping principal community contours, it is likely to be conservative in counting the number of stations receivable by listeners. Particularly in rural areas where there are relatively few operating stations, and thus relatively low levels of daytime interference, listeners may be able to receive AM signals beyond the predicted 5 mV/m contour and to receive FM signals beyond the predicted 3.16 mV/m contour. Hence, there are likely to be more signals available to the average listener in such a "market" than the number of signals that would be counted by this methodology. The level of competition is therefore likely to be higher than the overlap numbers might suggest.

47. Where a party seeks to acquire stations with overlapping principal community contours but which are licensed to communities in different markets, or where one is licensed to a community in a designated market and the other is not, we intend to apply the rules applicable in the market where the overlap takes place. If the overlap takes place in both markets, or both within a designated market and outside any designated market, the more restrictive limits applicable to the smaller market will be applied.<sup>102</sup>

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<sup>101</sup> A party seeking to purchase a station or stations outside of a designated market but in a market with 15 or more stations must commission an audience survey to demonstrate compliance with the 25 percent audience share cap described in more detail below.

<sup>102</sup> To assist us in obtaining and reviewing compliance with these new rules, we will require that every transfer, assignment, or new station application involving principal community contour overlaps between commonly owned radio stations or time brokered stations (of the type governed by new §73.3555(a)(2)), contain a certificate affirming compliance with the applicable ownership rules substantiated by a separate exhibit containing the market and audience information necessary to demonstrate compliance. The





48. The Audience Share Cap. In addition to implementing numerical caps for local radio markets, we believe that an additional safeguard in the form of a pre-acquisition 25 percent audience share cap should be adopted.<sup>103</sup> Such a cap will ensure that one entity is not able to purchase a combination of stations that complies with our numerical limits but that nonetheless represents a disproportionate share of the local market that could threaten our competition and diversity concerns. For example, in some markets, it may be possible for a single entity acquiring the permissible number of stations to obtain a combined audience share well in excess of 40 percent of the total commercial radio audience. Although we believe the likelihood of such acquisitions is relatively small, such a possibility persuades us to couple our new numerical caps with a pre-acquisition audience share limit. Under this element of the new local ownership rule, a licensee will be precluded from acquiring a particular station if the combined audience share of all radio stations in the market to be owned by the licensee exceeds 25 percent at the time of its application.<sup>104</sup>

49. The 25 percent audience share limit is purposefully conservative. We recognize, for example, that radio stations face considerable competition for audience and advertising not just from each other, but also from a variety of other local media outlets. Indeed, recent statistics suggest that, on average, all radio stations combined represent only about 12 percent of any given local mass media advertising market.<sup>105</sup> We have nonetheless elected, out of an abundance of caution, to rely on an audience share cap that measures each owner's share of the radio marketplace alone.

50. The 25 percent audience share limit is also substantially more restrictive than ordinary antitrust concerns would mandate. A strict antitrust analysis might permit considerably greater consolidation in local markets than the 25 percent cap. However, our ownership rules are also designed to protect and promote a diversity of voices -- a concern distinct

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applicable forms (FCC Forms 301, 314 and 315) will be amended accordingly. In the interim, each applicant should prepare its own separate exhibit and certification.

<sup>103</sup> A station's "audience share" is the average number of persons age 12 or older on an average quarter-hour basis, Monday through Sunday, 6 a.m. to midnight, who listen to the station, expressed as a percentage of the average number of persons listening to rated commercial AM and FM stations in its radio market.

<sup>104</sup> If the event triggering a market share analysis is not a station acquisition, but execution of a qualified local time brokerage agreement (see paras. 58 through 67, infra), the market shares of the stations involved shall be determined based on the most recent data available as of the date the local time brokerage agreement becomes effective.

<sup>105</sup> Robert J. Coen, McCann-Erickson, Inc.



from antitrust objectives. Accordingly, we decline to base our common ownership restrictions solely on economic concentration considerations.

51. Specifically, we believe that a 25 percent audience share limit strikes the appropriate balance between our interest in permitting scale economies that should improve the quality of radio offerings, on the one hand, and our concerns over preventing undue concentration of control, on the other. Allowing up to 25 percent ownership in a media segment that represents 12 percent, on average, of an overall media advertising market means that, at most, a single radio owner could "control" about three percent of the local advertising marketplace. Moreover, focusing on the local radio market alone, the 25 percent audience share cap will assure that at least four diverse radio voices will co-exist alongside the numerous other media voices now routinely present. We are convinced, therefore, that both competition and viewpoint diversity will continue to flourish under the 25 percent audience share cap.

52. We also stress that, in most cases, the numerical limits described above will ensure that there are more than four radio owners in any given market. Indeed, we anticipate that the numerical caps will often prevent a licensee from buying additional stations well before it reaches the 25 percent audience share cap. A staff analysis of the number of typical radio stations (*i.e.*, those with average shares) a licensee could acquire without exceeding the 25 percent audience share cap illustrates this finding. For example, as shown by this analysis, an entity buying average radio facilities in a market with 40 stations would be able to acquire 10 stations and still meet the 25 percent audience share limit; however, the new numerical caps would prevent it from owning more than 6 total (3 AMs and 3 FMs). Moreover, even in small markets (*i.e.*, those with fewer than 20 stations), a licensee buying average stations would not exceed the 25 percent audience share cap if it purchased the full complement of stations allowed under the new rules. See Appendix D.

53. Although many acquisitions will thus be unaffected by the audience share limit, we emphasize that the limit will nonetheless serve an important role in our new local ownership scheme -- namely, to prevent the consolidation of the top stations in a particular radio market. A staff analysis of 30 representative markets indicates that, even using a share base which includes non-commercial and unrated stations, in only one market would a single entity complying with the numerical limits be allowed to acquire the top-rated stations in the market. See Appendix D. Adjusting for the smaller share base of commercial rated stations which we are using in our rules, consolidation of the top-rated stations in this market would also be prohibited. Our studies thus indicate that the 25 percent audience share cap will act as an effective "backstop" to prevent undue concentration in local radio markets. At the same time, the cap will allow new combinations of low-rated stations that will be better able to compete with their top-rated competitors.

54. In response to commenters that consider an approach based on share prohibitively complicated, we believe that reliance on share data for purposes of the new local rule is relatively simple. Although a number of



commenters voiced concerns that share data can be somewhat volatile, we believe the cautious approach we have taken in both crafting and applying the revised rule provides adequate safeguards to foreclose allowing undesirable combinations based on short term fluctuations in share data.<sup>106</sup> Accordingly, when an entity owning stations in a market applies for an additional station in that market, the relevant share data for the market will be determined with reference to the most recent audience data for the market at the time its application is filed.<sup>107</sup> Some commenters also note that the Commission rejected a market share approach as too complex to be used as the standard for waiver of the one-to-a-market rule.<sup>108</sup> We continue to believe that use of market share data would be difficult in that situation because radio and television markets are measured differently. That problem, however, does not exist in terms of the local radio ownership rule we adopt today. Finally, although some commenters argue that stations will artificially restrict their audience share to leave room for purchasing additional stations that may come on the market, we are not persuaded that group owners will adopt such a strategy in today's radio marketplace since ratings directly translate into advertising dollars.

55. We are convinced, however, that there are instances in which the 25 percent audience cap should not be applied. Specifically, we believe that such a cap may unduly preclude stations and listeners in the smallest markets

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<sup>106</sup> In relying on audience survey data we intend to use the same type of data that is regularly used by participants in the radio industry for commercial purposes and on which significant investments, for advertising sales and other purposes, are routinely based. We are aware that the data involved are subject to certain sampling errors, and to rounding, and can fluctuate based on changes in audience tastes, station facilities and other market variables. Because the share limit is intended as a secondary protection to be used in association with the numerical limits and in view of our belief that minor variations in the data involve no systematic bias, we believe the data sources regularly used in the radio industry provide a valid basis on which we may act. For this reason and in the absence of information of unique problems, we also do not intend to go behind the available data to investigate minor statistical issues, more subtle in nature than the regulatory process is equipped to resolve. In this regard, it is worth noting that audience survey data have been used by the Commission for many years without major difficulties in other contexts and have even been used in the Copyright Act through incorporating our rules by reference. See Cable Television Report and Order, 36 FCC 2d 143, para. 84 (1972) (definition of "local" broadcast signals); Copyright Act of 1976, 17 U.S.C. §111; see also Memorandum Opinion and Order in Docket 83-1009, 100 FCC 2d 74, para. 39 (1984) (use of Arbitron circulation data in national ownership rules); Report and Order in Docket 12782 (1970) (prime time access rule application determined based on ARB prime time market rankings).

<sup>107</sup> For stations outside designated radio markets, share data are the data for all counties that are within the radio market, in whole or in part.

<sup>108</sup> See One-to-a-Market Order, 4 FCC Rcd at 1752.



from realizing the benefits that greater common ownership can bring. Because these markets do not have the advertising base to support as many stations as large markets, it may not be possible to acquire even the AM/FM combination permitted under our current rules without exceeding a 25 percent audience cap. However, small stations have for years been struggling financially, many of them in small markets. To avoid adoption of a rule that withholds the benefits of common ownership from those markets that may be most in need of them, we adopt an alternate safeguard for those markets with fewer than 15 stations. In such markets, an entity may not acquire the third station permitted by the numerical caps if that acquisition would result in ownership of 50 percent or more of the stations in the market. In effect, this limitation will ensure that in small markets where the existing rules require three or more separate owners, there will also be three or more separate owners under the new rules.

56. As proposed in the Notice, our rules do not require divestiture if a group owner's local market shares grow to exceed the cap at some time after acquisition, or if the owner's market tier changes. Forced divestiture would in essence punish stations in the first case for excellence in serving the local community, as reflected by listenership gains, and, in the second case, for relatively minor fluctuations in audience share data over which they have no control. For similar reasons, our rules do not require a multiple owner which acquired its stations in compliance with the audience share and numerical stations limits adopted here to break up its station group upon transfer or assignment because the combined share of the group has grown to a level exceeding the 25 percent acquisition limit or the applicable numerical limit has changed. Of course, such a group owner will be precluded from purchasing more stations in the market unless it subsequently falls below the numerical and audience share caps. Furthermore, in order to insure continued monitoring of this area, we hereby instruct the Mass Media Bureau to prepare an annual report concerning the market shares of national and local radio combinations. Based on the data gathered, we expect the Bureau to recommend appropriate Commission action.<sup>109</sup>

57. In no case will we permit same-service simulcasting exceeding 25 percent of the broadcast hours of either simulcasting station where the stations involved serve substantially the same area. For purposes of this limitation, we will consider stations to serve substantially the same area if the principal community contours of the stations overlap and the overlap area constitutes more than 50 percent of the total service area of either station. We see no benefit to the public from permitting commonly owned same-service

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<sup>109</sup> The Commission retains the right, of course, to implement any of a full range of remedies where its analysis suggests that ownership levels in a particular market might threaten the public interest. Such remedies might include a refusal to consent to transfer or assignment applications, a refusal to grant construction permits or the denial of the transfer or assignment of a large station group to a single owner. In extreme cases, we could also require divestiture. In this latter regard, we will carefully review the circumstances through which any station group reaches or exceeds a 40 percent local market share.





stations in the same market to substantially duplicate programming.<sup>110</sup> As observed in the Commission's AM Expanded Band Order,<sup>111</sup> when a channel is licensed to a particular community, others are prevented from using that channel and six adjacent channels at varying distances of up to hundreds of kilometers. The limited amount of available spectrum could be used more efficiently by other parties to serve competition and diversity goals. Nor do we believe that substantial same-service simulcasting would aid economically disadvantaged stations. As commenters submit, same-service simulcasting is unlikely to be profitable for an individual station because the audience for the programming in question will be shared by two or more stations.<sup>112</sup> At the same time, we are persuaded that limited simulcasting, particularly where expensive, locally produced programming such as on-the-spot news coverage is involved, could economically benefit stations and does not so erode diversity or undercut efficient spectrum use as to warrant preclusion. We believe that the restriction we are adopting here appropriately balances these competing concerns.

## V. JOINT VENTURES

### A. Background

58. As the Notice pointed out, joint ventures provide separately owned stations with efficiencies similar to those available to commonly owned stations by permitting them to function cooperatively via joint advertising sales, shared technical facilities and joint programming arrangements (or "time brokerage"). Such operational joint ventures are not precluded by any Commission rule or policy as long as the Commission's ownership rules are not violated and the participating licensees maintain ultimate control over their facilities. The Notice suggested that these arrangements benefit the radio industry, but noted that more careful review might be warranted in situations where competition in a given market is limited. The Notice therefore questioned whether the Commission should adopt specific qualifications for all joint ventures, including: (1) full and careful compliance with the antitrust laws; (2) a provision that such arrangements be undertaken only with a limited number of stations in large and diverse markets; (3) a requirement that each licensee retain editorial control; and (4) a mechanism for prompt termination of the arrangement when individual participants

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<sup>110</sup> Simulcasting, or program duplication, refers to the simultaneous broadcasting of a particular program over co-owned stations serving the same market, or the broadcasting of a particular program by one station within 24 hours before or after the identical program is broadcast over the other station.

<sup>111</sup> AM Expanded Band Order, 6 FCC Rcd 6273, 6329-30 (1991).

<sup>112</sup> We will continue to permit same-service simulcasting in the limited circumstances delineated in the AM Expanded Band Order. In addition, a broadcaster operating same-service stations within a market pursuant to a waiver of the local ownership rule may continue to simulcast programming on those stations if he or she is currently doing so.



believe that the agreement is no longer in the public interest. The Notice also suggested that the Commission adopt reporting requirements and questioned whether the Commission's current complaint and compliance procedures are sufficient or should be augmented.

59. In addition to the above proposed qualifications, the Notice asked if specific restrictions should be imposed on stations participating in time brokerage agreements. Time brokerage is a type of joint venture that generally involves the sale by a licensee of "discrete blocks of time to a 'broker' who then supplies the programming to fill that time and sells the commercial spot announcements to support it."<sup>113</sup> The Notice sought comment on whether to treat same-service and cross-service time brokerage agreements differently, whether to treat simulcasting differently than other programming arrangements, whether to limit the number of stations a single program supplier may serve, and whether to limit the amount of time a station may broker. In addition, the Notice sought comment on the possible impact of time brokerage on a licensee's renewal expectancy, and asked whether 24-hour-per-day time brokerage circumvents the Commission's ownership restrictions. The Notice further questioned whether time brokerage effectively allows an FM station to extend its own contour into that of another FM station, even though Section 74.1232(d)(1) would prohibit that station from owning an FM translator to accomplish the same purpose. Finally, the Notice asked whether a permissive policy toward joint ventures obviates the need to relax the ownership limits, and vice versa.

#### B. Comments

60. Most commenters addressing the joint venture issue restrict their comments to time brokerage. The few commenters that discuss other types of joint ventures believe that such arrangements are beneficial, provided there is no antitrust violation.<sup>114</sup> Similarly, most commenters favor time brokerage as a way to help financially struggling stations stay on the air and to strengthen the radio industry.<sup>115</sup> They argue that the current proliferation of time brokerage agreements arose out of economic necessity because the number of radio stations increased dramatically over the past decade, and undermined the competitive position of many broadcasters.

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<sup>113</sup> Policy Statement in BC Docket No. 78-355 (Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming), 82 FCC 2d 107, 107 n.2 (1980). Network affiliation arrangements generally include, among other things, a variant of time brokerage whereby "the local affiliate sells time to the network in exchange for desirable programming, station compensation, and the opportunity to place local commercials within popular national programs." Id. at 108 n.4.

<sup>114</sup> See, e.g., Communications Corporation Comments at 17-18; FTC Reply at 23-24; Group W Comments at 13; Mid-West Family Stations Comments at 8-9.

<sup>115</sup> See, e.g., Blackburn & Company Comments at 2; CapCities/ABC Comments at 19; Crown Broadcasting Comments at 5; HVS Partners Comments at 2-6.



61. The commenters generally oppose additional restriction of time brokerage, arguing that the antitrust laws and current Commission policy are sufficient to prevent abuse. Commenters submit that some time brokerage arrangements are no different than network agreements, which are not restricted.<sup>116</sup> Commenters are particularly opposed to the Commission's proposal that all agreements have a provision permitting one party to terminate if it believes the arrangement is no longer in the public interest, arguing that such a requirement would inhibit the parties' ability to contract freely.<sup>117</sup> Many commenters also assert that a joint venture restriction based on market size would unfairly inhibit small markets.<sup>118</sup> They claim that market conditions will dictate which stations can operate independently and which facilities can best take advantage of time brokerage. A few commenters, however, suggest that the Commission consider market size in evaluating a particular time brokerage arrangement.<sup>119</sup> Commenters that favor time brokerage are divided as to whether the Commission should adopt reporting requirements.<sup>120</sup>

62. Some commenters oppose time brokerage, arguing that it inhibits competition and diversity.<sup>121</sup> These commenters are concerned that stations involved in time brokerage will abdicate their responsibilities as licensees, and that time brokerage is tantamount to a transfer of control. Commenters also assert that time brokerage permits an individual or entity that is not a Commission licensee, or that was once a licensee but was stripped of its license, to control several stations.<sup>122</sup> As a result, these commenters argue, time brokerage is inconsistent with the Commission's statutory duties and its policy of preventing the concentration of control of broadcast facilities. They thus propose strict limitations on time brokerage arrangements.<sup>123</sup>

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<sup>116</sup> See, e.g., Group W Comments at 13-14; NAB Reply at 6.

<sup>117</sup> See, e.g., Bonneville International Corporation Comments at 14-15; CapCities/ABC Comments at 21; NAB Comments at 28-29.

<sup>118</sup> See, e.g., Bonneville International Corporation Comments at 13-14; NAB Comments at 27; South Fork Comments at 20.

<sup>119</sup> See, e.g., Greater Pacific Radio Exchange Comments at 2.

<sup>120</sup> See, e.g., Communications Corporation Comments at 17-18; Great American Comments at 5 (in favor of reporting requirements); EBE Communications Comments at 9 (opposes reporting requirements).

<sup>121</sup> See, e.g., AHORA Comments at 4; NABOB Comments at 1; TRAC Comments at 20-22; UOC Reply at 9-11.

<sup>122</sup> See, e.g., TRAC Comments at 23.

<sup>123</sup> For example, TRAC asserts that contracts for time brokerage should be filed with the Commission, that contracts for more than four hours per week to any one programmer should be permitted only with Commission consent,



### C. Discussion

63. The comments in this proceeding persuade us that the various operational joint venture arrangements described in the Notice generally strengthen the radio service that the public receives by providing stations that are not commonly owned with economies similar to those available to commonly owned stations. Such arrangements are generally beneficial to the industry and listening audience because they enable stations to pool resources and reduce operating expenses without necessarily threatening competition or diversity. Accordingly, we do not believe that additional regulation of joint ventures other than local time brokerage is necessary or appropriate. We note in this regard that, of the four qualifications proposed in the Notice for all joint venture arrangements, two are currently required of all station licensees -- compliance with the antitrust laws and maintenance of editorial control. Our review of the record persuades us that the third suggestion -- limiting joint ventures to a finite number of stations in large and diverse markets -- would deny the benefits of joint ventures to small markets, where they may be most needed. We also conclude that the fourth proposed qualification -- that joint venture agreements include a mechanism for prompt termination -- could interfere with the parties' ability to contract freely and would make joint venture arrangements unnecessarily impermanent.<sup>124</sup> We have permitted various joint venture arrangements among stations, including joint sales of commercial time, for a

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and that the Commission should adopt a 28-hour per week limit on any one station. It asserts that stations brokered more than 28 hours per week should not receive a renewal expectancy, and that no station should be permitted to control the programming on more than two stations in a market or in adjacent markets. NABOB suggests a presumption that AM/AM or AM/FM time brokerage arrangements are within the public interest but that FM/FM arrangements are not. Holston Valley Broadcasting asserts that time brokerage should be limited to situations where the ability of technically disadvantaged stations to reach the established marketplace can be improved. Holston Valley contends that the same rules applied to television networking should apply to radio, including filing of contracts with the Commission and the one affiliate per community limitation. Ragan A. Henry submits that time brokerage agreements should be barred in cases where a major market FM in effect uses neighboring smaller market FM stations as translators.

In addition, NABOB and AHORA request that the Commission freeze the use of time brokerage pending the outcome of this proceeding. Because such a freeze would have been unduly disruptive to the radio industry, we did not act on NABOB and AHORA's suggestion.

<sup>124</sup> While we decline to impose specific contractual requirements on licensees concerning termination of time brokerage agreements, we re-emphasize that in this context, as in all others, licensees must maintain control of their facilities and reserve to themselves the ultimate editorial discretion necessary to ensure that their stations program in the public interest and serve the needs of their communities of license.





number of years<sup>125</sup> and nothing in our experience in that time or in this record suggests that such arrangements have undermined our diversity goals or impaired competition among broadcast stations. Accordingly, we will continue to allow separately owned stations to function cooperatively in terms of advertising sales, technical facilities, formats and other aspects of station operation as long as each licensee retains control of its station and complies with the Communications Act, the Commission's rules and policies and the antitrust laws. Of course, if any new type of joint venture arises involving activity detrimental to the public, such as anticompetitive price fixing or market division, the Commission may adopt further restrictions.

64. While we thus conclude that general restraint of joint venture arrangements in broadcasting would be counterproductive, we also believe that the substantial relaxation of the local broadcast ownership rules which we today adopt counsels a more cautious approach where time brokerage of stations in the same market is involved.<sup>126</sup> We are particularly concerned that widespread and substantial time brokerage arrangements among stations serving the same market, in concert with the increased common ownership permitted by our revised local rules, could undermine our continuing interest in broadcast competition and diversity. The record in this proceeding does not suggest that such a result is at all likely.<sup>127</sup> We nonetheless believe it is prudent to preclude the possibility of such an outcome by imposing certain limits on local time brokerage arrangements, at least until we have had some experience with the effects of our new regulatory approach in broadcast markets.

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<sup>125</sup> See, e.g., Report and Order in BC Docket No. 80-438 ("In the Matter of Representation of Stations by Representatives Owned by Competing Stations in the Same Area"), 87 FOC 2d 668 (1981).

<sup>126</sup> Time brokerage agreements involving stations licensed to different markets raise little public interest concern; indeed they can be difficult to distinguish from network affiliation agreements, of which the Commission has long approved.

<sup>127</sup> Not only has the communications marketplace become increasingly competitive and diverse over the past few years, but a recent survey of broadcast stations conducted by the Commission's Field Operations Bureau also revealed that time brokerage is not a widespread practice. Of 284 stations surveyed, only 17 (or six percent) engaged in time brokerage. Of those 17, only seven indicated that they broker more than half of their broadcast day, and only two radio stations (less than one percent) were engaged in local time brokerage. Public Notice, "Broadcast Station Time Brokerage Survey Completed," Mimeo No. 21878 (Feb. 14, 1992). See also "Your IMA Questions Answered", Radio & Records (Feb. 28, 1992) at 16. Moreover, to the extent time brokerage is a reaction to difficult market conditions, as many commenters argue, the incidence of time brokerage may decrease once the market realigns itself in response to changes to the ownership rules adopted today.



65. Accordingly, to prevent the use of time brokerage to circumvent our new ownership limits, where an individual or entity owns or has an attributable interest in one or more stations in a market, time brokerage of any other station in that market for more than 15 percent of the brokered station's broadcast hours per week will result in counting the brokered station toward the brokering licensee's permissible ownership totals under the revised local ownership rules.<sup>128</sup> Similarly, any such brokered station will also be counted in evaluating compliance with the 30/30 national multiple ownership limits which we adopt today. See Section III, *supra*. In short, we will not permit a local station owner to substantially broker a station in its market which it could not own under our new rules.<sup>129</sup>

66. A similar concern for diversity, as well as for efficient use of the spectrum, underlies our conclusion that licensees should not be permitted through local time brokerage arrangements to effectively simulcast the programming of their station when such simulcasting would be precluded were the licensee to own the brokered station. Accordingly, we will specifically prohibit licensees from duplicating more than 25 percent of their owned-station's programming through brokered stations where the owned station and the brokered station are in the same service and serve substantially the same area, as defined above. See paragraph 57, *supra*.

67. Finally, in addition to the above restrictions, all time brokerage arrangements will continue to be monitored via the Commission's complaint and compliance process. Further, we will require stations involved in time brokerage agreements to keep copies of those agreements in their public inspection files, with confidential or proprietary information redacted where appropriate, and to file, within 30 days of execution, a copy of any local time brokerage agreement which would result in the arrangement being counted in determining the brokering licensee's compliance with local and national multiple ownership rules.<sup>130</sup> We believe that these requirements will impose a minimal burden on licensees and will make it easier for the Commission and

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<sup>128</sup> Because this limitation of time brokerage is based in part upon our concern for voice diversity in the local market, it will apply regardless of whether the brokering entity supplies the time-brokered programming from the broker-owned station that is in the same market as the brokered station or from a source outside the brokered market (such as a distant station owned by the broker).

<sup>129</sup> We do not regard time brokerage agreements in which the broker has no cognizable ownership interest in any licensee in the brokered market as posing a significant threat to the integrity of our ownership rules or the diversity and competition principles upon which they are based. Accordingly, we will not count such stations in assessing compliance with our ownership rules nor will we otherwise restrict time brokerage agreements in such circumstances.

<sup>130</sup> This requirement parallels the existing provisions of our rules which oblige licensees to file other relevant contractual agreements within 30 days of their execution. See 47 C.F.R. Section 73.3613.



others to properly monitor time brokerage to ensure that licensees retain control of their stations and adhere to the Communications Act, Commission Rules and policies and the antitrust laws.

## VI. ANNUAL REPORTING AND INFORMATION GATHERING

68. The Commission historically has gathered information concerning ownership interests among radio broadcasters. In light of the rule changes adopted in this proceeding, we have considered whether we may need to supplement our existing base of information in order to monitor the impact of the new rules on competitiveness, diversity and other aspects of the radio industry. Given our conclusion that the revised rules will strengthen the radio service, we have decided to monitor the rules' efficacy in improving service by radio broadcasters to the public. Therefore, we direct the Mass Media Bureau to prepare an annual report to assess the effect of the revised rules on the radio industry, including their impact on competition, diversity, and minority ownership. In particular, the Bureau is directed to track the market shares of local and national combinations and to recommend to the Commission appropriate action in the event that one entity threatens to dominate local or national radio service. This directive will require the Bureau to gather information from many sources in order to verify and supplement its existing data base. We intend to use our existing form for reporting ownership interests,<sup>131</sup> to the extent possible, to study the respective local and national market shares for group owners, as well as other matters relevant to industry competitiveness and diversity. We will supplement the information provided on this form with such other published sources or our own independent data collection efforts to the extent necessary. Regarding the effect of the rules on minority ownership, the Commission's Office of Minority Enterprise will maintain responsibility for collecting necessary data while the Mass Media Bureau will provide analysis within the context of its annual report.

## VII. CONCLUSION

69. The efficacy of Commission ownership rules designed to promote economic competition and viewpoint diversity depends on whether they accurately reflect, and take into account, the realities of the radio broadcasting marketplace. Ownership rules that do not will at the very least be ineffective, and at worst counterproductive, in achieving these goals. Our review of the record in this proceeding confirms that the revisions to the radio ownership rules adopted today will assure that our fundamental public policy goals can continue to be met. In the contemporary marketplace, the proliferation of radio and other mass media outlets assures that no single group owner can dominate the national market and that relaxation of the national ownership caps is therefore appropriate. In the local market, which we find to be the better focus for determining whether viewpoint diversity and competition exist, these same changes indicate that the current duopoly rules may safely be relaxed. In addition, the significant debilitation in the economic strength of many radio stations that has

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<sup>131</sup> See FCC Form 323, February 1990.



accelerated during the last several years underlines the need to permit greater consolidation. These same considerations warrant allowing separately owned stations to engage in joint ventures subject to Commission regulation and oversight. We stress, of course, that our commitment to competition and diversity will be reflected in our continuing oversight in this area. Should subsequent events dictate the need for adjustments to these new rules, we will not hesitate to act to assure that these fundamental public policy goals continue to be served.<sup>132</sup>

#### VIII. ADMINISTRATIVE MATTERS

70. Pursuant to the Regulatory Flexibility Act of 1980, the Final Regulatory Flexibility Analysis for this item is attached as Appendix A.

71. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 4 U.S.C. § 601, et seq. (1981)).

72. The rules adopted here will become effective on August 1, 1992. The Commission will not accept applications based on these new rules until on or after that date.

73. For additional information on this proceeding, contact Jane Hinckley Halprin, Mass Media Bureau, (202) 632-7792.

#### IX. ORDERING CLAUSES

74. IT IS THEREFORE ORDERED that pursuant to the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), Part 73 of the Commission's Rules, 47 C.F.R. § 73, IS AMENDED as set forth in Appendix C, below.

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<sup>132</sup> As requested by the Notice, the commenters offer suggestions of ways other than those proposed to strengthen radio broadcasting. They are either beyond the scope of this proceeding or would be more appropriately addressed, if at all, in other proceedings.





75. IT IS FURTHER ORDERED that the amendments to 47 C.F.R. Part 73 adopted in this Report and Order will be effective August 1, 1992, to allow sufficient time to apply for and receive approval from the Office of Management and Budget.

76. IT IS FURTHER ORDERED that MM Docket No. 91-140 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary



**APPENDIX A**  
**Final Regulatory Flexibility Analysis**

**I. Need for and Purpose of this Action:**

1. This action is taken to relax the Commission's national and local ownership rules and to refine its policies regarding joint ventures. The Commission believes that this action will strengthen the radio industry.

**II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:** None.

**III. Significant Alternatives Considered and Rejected:**

2. The Commission considered eliminating, rather than relaxing, the national ownership limits. The Commission also considered relaxing the rule using an audience cap or an approach based on market size. After reviewing the comments and pertinent data in this proceeding, the Commission concluded that the 30/30 numerical limit was the most effective and immediate way to benefit the radio industry and the listening public. The Commission also considered a strict numerical, audience based or market rank-based approach to relaxing the local ownership rule in all markets. The Commission concluded that a rule combining all three approaches best accounts for the character of individual markets. Finally, the Commission considered imposing restrictions on joint ventures other than time brokerage arrangements, but concluded that such limitations are unnecessary because such joint ventures can greatly benefit broadcasters and pose little antitrust concern.



APPENDIX B  
List of Commenters

Initial Comments<sup>1</sup>

1. American Hispanic Owned Radio Association (AHORA)
2. American Media, Inc.
3. American Women in Radio and Television, Inc. (AWRT)
4. Bonneville International Corporation
5. Gary Burns, Inc.
6. Capital Cities/ABC, Inc.
7. CBS, Inc.
8. Peter B. Collins
9. Communications Corporation
10. Crawford Broadcasting Company
11. Crown Broadcasting, Inc.
12. Degree Communications
13. Demaree Media, Inc.
14. du Treil, Lundin & Rackley, Inc.
15. East Shore Broadcasting Corporation
16. EBE Communications Limited Partnership
17. Fairmont Broadcasting Company
18. Fisher Broadcasting, Inc.
19. Freedom of Expression Foundation, Inc.
20. Fuller-Jeffrey Broadcasting Companies, Inc.
21. Honorable Albert Gore, Jr.
22. Great American Communications Company, Inc.
23. Greater Pacific Radio Exchange, Inc.
24. Group W Radio, Inc.
25. Honorable John Paul Hammerschmidt
26. Ragan A. Henry
27. Holston Valley Broadcasting Corporation
28. HVS Partners and Gary Burns, Inc.
29. Infinity Broadcasting Corporation
30. James Ingstad
31. Robert E. Ingstad
32. Jacor Communications, Inc.
33. KQWB (AM)
34. Marsh Broadcasting Corporation
35. Mid-West Family Stations
36. Murray Communications
37. NAACP, the League of United Latin American Citizens, and the National Black Media Coalition (NAACP)
38. National Association of Black Owned Broadcasters, Inc. (NABOB)
39. National Association of Broadcasters (NAB)
40. Nationwide Communications, Inc.
41. Panhandle Broadcasting, Inc.

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<sup>1</sup> The Office of Communications of the United Church of Christ (UCC) submitted its initial comments on August 6, 1991. Blackburn & Company submitted its comments on August 8, 1991. Pursuant to Section 1.41 of the Commission's Rules, we will consider these late-filed pleadings as informal comments in this proceeding.



42. Salem Communications Corporation
43. Sheboygan County Broadcasting Co., Inc.
44. The Sillerman Companies
45. South Fork Broadcasting Corp.
46. Telecommunications Research and Action Center and Washington Area  
Citizens' Coalition Interested in Viewers' Constitutional  
Rights (TRAC)
47. T.G.S. Communications, Inc.
48. 3-D Communications Corporation
49. United States Catholic Conference
50. Universal Broadcasting Corporation
51. Willis Broadcasting Corporation
52. WJTZ (AM)
53. The Woodfin Group

#### Reply Comments <sup>2</sup>

1. Honorable Lloyd Bentsen
2. Bureau of Economics of the Federal Trade Commission
3. John R. Byrne
4. CBS, Inc.
5. Chabot College
6. Decorah Radio, Inc.
7. Honorable Alan J. Dixon
8. East Shore Broadcasting Corporation
9. Honorable Dante B. Fascell
10. Honorable Harris W. Fawell
11. Honorable Bill Goodling
12. Goodrich Broadcasting, Inc.
13. Honorable Albert Gore, Jr.
14. Honorable Bob Graham
15. Honorable Charles E. Grassley
16. Group W Radio, Inc.
17. Hualapai Broadcasters, Inc.
18. Holston Valley Broadcasting Corporation
19. KIOU-FM
20. Honorable Robert J. Lagomarsino
21. Honorable Howard M. Metzenbaum
22. Honorable Daniel P. Moynihan
23. NAACP, the League of United Latin American Citizens and the National  
Black Media Coalition
24. National Association of Broadcasters
25. Honorable Ileana Ros-Lehtinen
26. Sample Corporation

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<sup>2</sup> The Office of Communications of the United Church of Christ (UCC) submitted its reply comments on September 6, 1991. Pursuant to Section 1.41 of the Commission's Rules, we will consider this late-filed pleading as informal comments in this proceeding. We also note that over the last few months, we received more than 100 ex parte comments in this proceeding. Those ex parte comments have been included in the record of this Docket.





27. Honorable Paul S. Sarbanes
28. Honorable Louise M. Slaughter
29. South Fork Broadcasting Corporation
30. Robert T. Wertine
31. WKIN/WZXY
32. Honorable Harris Wofford



APPENDIX C  
Rule Changes<sup>1</sup>

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

1. The Authority Citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 154, 303.

2. Section 73.3526 is amended by adding new paragraph (a) (12) and revising paragraph (e) to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

(a) \* \* \*

(12) A copy of every agreement or contract involving time brokerage arrangements, with confidential or proprietary information redacted where appropriate.

\* \* \* \* \*

(e) Period of Retention. The records specified in paragraph (a) (4) of this section shall be retained for periods specified in §73.1940 (2 years). The manual specified in paragraph (a) (6) of this section shall be retained indefinitely. The letters specified in paragraph (a) (7) of this section shall be retained for the period specified in §73.1202 (3 years). The "significant treatment of community issues" list and the records demonstrating the station's response to the educational and informational needs of children specified in paragraph (a) (8) of this section shall be retained by commercial broadcast television licensees for the term of license (5 years). Commercial AM and FM radio licensees shall retain the "significant treatment of community issues list" specified in paragraph (a) (9) of this section for the term of license (7 years). The certification specified in paragraph (a) (10) of this section shall be retained for the period specified in §73.3580 (for as long as the application to which it refers). The records specified in paragraph (a) (12) of this section shall be retained as long as the contract or agreement is in force. The records specified in paragraphs (a) (1), (2), (3), and (5) of this section shall be retained as follows: \* \* \*

\* \* \* \* \*

3. Section 73.3555 is amended by revising paragraphs (a), (b), (c), (d), (e) and Note 4 to read as follows:

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<sup>1</sup> Some rules included in this Appendix have been redesignated rather than modified, such as the television contour overlap rule, the one-to-a-market rule, the daily newspaper cross-ownership rule and the television national multiple ownership rule. The entire text of these rules is provided for the convenience of the reader.



§ 73.3555 Multiple ownership.

(a) (1) Radio Contour Overlap Rule. No license for an AM or FM broadcasting station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other AM or FM broadcasting station directly or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests or in the following circumstances:

(i) In radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market.

(ii) In radio markets with 15 to 29 commercial radio stations, a party may own up to 2 AM and 2 FM commercial stations, provided that the combined audience share of those stations does not exceed 25 percent.

(iii) In radio markets with 30 to 39 commercial radio stations, a party may own up to 3 AM and 2 FM commercial stations, provided that the combined audience share of those stations does not exceed 25 percent.

(iv) In radio markets with 40 or more commercial radio stations, a party may own up to 3 AM and 3 FM commercial stations, provided that the combined audience share of those stations does not exceed 25 percent.

(2) (i) Where the principal community contours of two stations in a market overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a) and (e). This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in subparagraph (a) (2) (i) above shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming.

(iii) Any party operating in conflict with the requirements of paragraph (a) (2) (i) above on the effective date of this rule shall come into compliance within one year thereafter.

(3) For purposes of this paragraph:



(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with §73.183 or §73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with §73.313.

(ii) A "radio market" is defined as a designated radio metro market for stations assigned to such markets. For stations not assigned to a designated radio metro market, the "radio market" is the area encompassed by the principal community contours of the stations in question (i.e. the station for which a Commission authorization is sought and any station that would be commonly owned whose principal community contour overlaps the principal community contour of that station). A designated radio metro market is a market so designated by Arbitron based on Arbitron's established standards or by a comparable independent professional audience survey organization applying generally accepted industry standards and generally coinciding with metropolitan statistical areas.

(iii) The "number of stations in a market," if the market is a designated radio metro market, is the number of commercial radio stations in the market that meet minimum audience survey organization reporting standards and, if the market is not a designated radio metro market, is the number of commercial radio stations in the market whose principal community contours fall within the radio market, in whole or in part.

(iv) A station's "audience share" is the average number of persons age 12 or older on an average quarter-hour basis, Monday-Sunday, 6 a.m.-midnight, who listen to the station, expressed as a percentage of the average number of persons listening to rated commercial AM and FM stations in its radio market. The "combined audience share" is the total audience share of all AM or FM stations that would be under common ownership or control following a proposed acquisition. For stations assigned to designated radio metro markets, the most recent published audience share data available at the time an application is filed with the Commission shall be used to calculate the combined audience share of the relevant AM or FM stations. For stations outside designated radio metro markets, the relevant audience share data are the data for all counties that are within the radio market, in whole or in part.

(v) "Time brokerage" is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

(vi) Where overlap of the principal community contours of stations in separate markets takes place, for purposes of applying paragraph (a) of this section, the rules applicable to the market in which the overlap takes place shall be applied. If the overlap takes place in both markets, the limits applicable to the market with the smallest number of commercial stations shall be applied. For purposes of determining in which market the overlap occurs, markets that are not designated radio markets shall not be deemed to include areas that are part of a designated market.





(b) Television Contour Overlap (Duopoly) Rule. No license for a TV broadcast station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the Grade B contour of that station (computed in accordance with Section 73.684) and the Grade B contour of any other TV broadcast station directly or indirectly owned, operated, or controlled by the same party.

(c) One-to-a-market Ownership Rule. No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls one or more such broadcast stations and the grant of such license will result in:

(1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station; or

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with § 73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station.

(d) Daily Newspaper Cross-Ownership Rule. No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(1) The predicted or measured 2 mV/m contour for an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or

(2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or

(3) The Grade A contour for a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(e) (1) National Multiple Ownership Rule. No license for a commercial AM, FM or TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in:

(i) more than 30 AM or more than 30 FM stations, or



(ii) more than 14 television stations, or

(iii) more than 12 television stations that are not minority-controlled.

(2) No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in, either:

(i) TV stations which have an aggregate national audience reach exceeding thirty (30) percent, or

(ii) TV stations which have an aggregate national audience reach exceeding twenty-five (25) percent and which are not minority-controlled.

(3) For purposes of this paragraph:

(i) "National audience reach" means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

(ii) "TV broadcast station" or "TV station" exclude stations which are primarily satellite operations.

(iii) "Minority-controlled" means more than 50 percent owned by one or more members of a minority group.

(iv) "Minority" means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

\* \* \* \* \*

Note 4: Paragraphs (a) through (e) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class IV stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b) of this Part, or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated, or controlled broadcast stations in the same service and if



no new encompassment of communities proscribed in paragraphs (b) and (c) of this section as to commonly owned, operated, or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience or necessity.) Commonly owned, operated or controlled broadcast stations with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group or entity, except as provided above in this note and by § 73.3555(a). If a commonly owned, operated, or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

4. Section 73.3556 is added to read as follows:

**§ 73.3556 Duplication of Programming On Commonly Owned or Time Brokered Stations**

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24 hour period.

5. Section 73.3613 is amended by revising paragraph (d) and adding new paragraph (e) to read as follows:

**§ 73.3613 Filing of contracts.**

\* \* \* \* \*

(d) Time brokerage agreements: Time brokerage agreements where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) overlap with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee.



Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.





APPENDIX D  
Analysis of Selected Markets

For a sample of 10 markets in each of the categories defined by the Commission, the attached tables show the number of rated radio stations (No. of Stns.) and the average audience share (Share Average) for an AM and an FM station.<sup>1</sup> The tables demonstrate that a single licensee buying typical facilities in these markets will generally fall well under the 25 percent audience cap. In addition, the tables show that the 25 percent audience cap will generally prevent one owner from acquiring all the top-rated stations before exceeding the numerical cap. The other information on each table is designed to show the implications of the new rule by market size categories as follows:

**Table 1: Markets with 40 or More Rated Stations** - In these markets an owner may acquire up to 3 AM and 3 FM stations as long as the combined audience share of these stations does not exceed 25%. This table indicates the audience share that would be served by one owner acquiring 3 typical AM and 3 typical FM stations (Total Share of 3 Avg AM + 3 Avg FM), the cumulative audience share of the 3 top-rated stations in each service (Top 3 Share) and the total audience that would be served by one owner (Total Share of Top 3 AM & Top 3 FM), if that owner acquired the maximum number of top-rated stations in each service.

**Table 2: Markets with Between 30 and 39 Rated Stations** - In these markets an owner may acquire up to 3 AM and 2 FM stations as long as the combined audience share of these stations does not exceed 25%. This table indicates the audience share that would be served by one owner acquiring 3 typical AM and 2 typical FM stations (Total Share of 3 Avg AM + 2 Avg FM), the cumulative audience share of the 3 top-rated AM stations (Top 3 AM Share), the cumulative audience share of the 2 top-rated FM stations (Top 2 FM Share) and the total audience that would be served by one owner (Total Share of Top 3 AM & Top 2 FM), if that owner acquired the maximum number of top-rated stations in each service.

**Table 3: Markets with 15 to 29 Rated Stations** - In these markets an owner may acquire up to 2 AM and 2 FM stations as long as the combined audience share of these stations does not exceed 25%. This table indicates the audience share that would be served by one owner acquiring 2 typical AM and 2 typical FM stations (Total Share of 2 Avg AM + 2 Avg FM), the cumulative audience share of the 2 top-rated stations in each service (Top 2 Share) and the total audience that would be served by one owner (Total Share of Top 2 AM & Top 2 FM), if that owner acquired the maximum number of top-rated stations in each service.

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<sup>1</sup> Source: James Duncan, American Radio Spring 1991 and American Radio Small Market Report 1991.



# Examples of AM and FM Shares for Each Market Category

Table 1  
Markets With 40 or More Rated Stations:

Market	No. of Stns.		Share Average	Total Share of 3 Avg AM+ 3 Avg FM	Top 3 Share	Total Share of Top 3 AM & Top 3 FM
San Fran.	47			11.1		30.5
		AM	1.7		16.9	
		FM	2.0		13.6	
New York	44			11.7		27.4
		AM	1.7		12.3	
		FM	2.2		15.1	
Providence- N. Bedford- Fall River	44			11.7		36.9
		AM	1.4		14.5	
		FM	2.5		22.4	
San Jose (San Fran.)	44			12.0		33.5
		AM	1.6		15.4	
		FM	2.4		18.1	
Monmouth, NJ (New York)	43			12.0		28.3
		AM	1.8		12.6	
		FM	2.2		15.7	
Wilkes Barre- Scranton	42			11.7		43.4
		AM	1.6		14.5	
		FM	2.3		28.9	
Riverside (L.A.)	42			11.7		33.5
		AM	1.4		10.8	
		FM	2.5		22.7	
Los Angeles	40			13.2		26.9
		AM	2.0		19.6	
		FM	2.4		27.1	
Nassau- Suffolk (New York)	40			13.2		26.9
		AM	1.9		11.1	
		FM	2.5		15.8	
Portsmouth (Boston)	40			12.6		37.6
		AM	1.9		10.9	
		FM	2.3		26.7	



Table 2  
Markets With Between 30 and 39 Rated Stations

<u>Market</u>	<u>No. of Stns.</u>	<u>Share Average</u>		<u>Total Share of 3 Avg AM+ 2 Avg FM</u>	<u>Top 3 AM Share</u>	<u>Top 2 FM Share</u>	<u>Total Share of Top 3 AM &amp; Top 2 FM</u>
Boston	39	AM	2.0	10.8	17.3		30.0
		FM	2.4			12.7	
Miami	36	AM	1.5	11.1	11.6		26.2
		FM	3.3			14.6	
San Diego	36	AM	1.9	11.5	16.2		28.8
		FM	2.9			12.6	
Wash., D.C.	35	AM	1.6	10.6	10.4		23.6
		FM	2.9			13.2	
Baltimore	35	AM	2.3	12.3	14.0		30.4
		FM	2.7			16.4	
Denver	33	AM	1.4	12.6	10.8		29.7
		FM	4.2			18.9	
Pittsburgh	32	AM	2.1	13.1	22.1		39.5
		FM	3.4			17.4	
Seattle	31	AM	2.1	13.1	18.6		31.2
		FM	3.4			12.6	
Phila.	30	AM	2.1	13.3	16.3		29.6
		FM	3.5			13.3	
St. Louis	30	AM	2.4	14.8	22.5		37.7
		FM	3.8			15.2	



**Table 3**  
**Markets With 15 To 29 Rated Stations**

<u>Market</u>	<u>No. of Stns.</u>		<u>Share Average</u>	<u>Total Share of 2 Avg AM+ 2 Avg FM</u>	<u>Top 2 Share</u>	<u>Total Share of Top 2 AM &amp; Top 2 FM</u>
Salt Lake City, UT	29	AM FM	1.9 3.9	11.6	8.3 22.7	31.0
San Antonio, TX	29	AM FM	1.8 4.8	13.2	12.1 19.8	31.9
Fresno, CA	27	AM FM	3.0 3.5	13.0	16.3 19.4	35.7
Milwaukee, WI	26	AM FM	2.8 4.2	14.0	19.4 17.1	36.5
Portland, OR	24	AM FM	2.4 4.5	13.8	14.4 17.9	32.3
Grand Rapids, MI	22	AM FM	1.8 4.9	13.4	10.3 18.4	28.7
McAllen, TX	20	AM FM	3.0 6.3	18.6	16.6 20.6	37.2
Indianapolis, IN	20	AM FM	3.0 5.4	16.8	18.7 24.4	43.1
Jackson, MS	18	AM FM	2.3 6.2	17.0	12.8 29.8	42.6
Madison, WI	17	AM FM	2.9 6.2	18.2	11.1 25.2	36.3





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## Federal Communications Commission Record

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### Statement of Commissioner James H. Quello

#### Report and Order, Revision of Radio Rules and Policies

As has become clear to everyone familiar with the radio industry, we are living in a totally different world today than in 1953 when our ownership rules were adopted. At that time, it was difficult for a person who had a radio license to fail. But today, with the splintering of formats and the advent of competition from new nonbroadcast media, it is difficult to succeed. The problems facing radio are not the result of a temporary slump brought on by a bad economy. They go to the heart of radio's future as a viable mass medium in this country.

I think this Report and Order is a responsible attempt to address these new realities. Of course, reasonable people may disagree about the precise number of stations that a single owner should be permitted to acquire. Some have suggested that there should be no limits — a position with which I cannot agree. Others have argued that there should be no change, and, again, the facts force me to reach a different conclusion. Once it became clear that we must find a middle ground, it also became clear that there is no metaphysically perfect answer. Perhaps no politically perfect answer, either.

Recognizing the difficulty of this task, Chairman Sikes took particular care in this proceeding to provide all offices with the findings of the Mass Media Bureau and solicited ideas from all of the Commissioners. Of all of the proceedings that have come before this agency since the Chairman arrived in 1989, I believe this proceeding has involved the most open exchange of views among the Commissioners. The give and take was genuine, and the Chairman should be commended.

This does not mean that the final outcome is what I would have crafted myself. I initially believed that the national ownership caps could have been relaxed even more, since there is no danger that a single owner could dominate the national radio market. This is particularly true when the level of concentration in radio is compared to that in the cable television or

publishing industries. In the end, however, I was persuaded that a more moderate approach to altering the national ownership limits would allow the Commission to monitor the effect of rule changes. If experience reveals that we have chosen the wrong number, there will be time enough to address the situation.

Similarly, if I had the only vote, I would have been somewhat more cautious in altering the duopoly rules. In particular, I am uneasy about allowing ownership of three AM and three FM stations in a single market. I would have preferred setting the limit at two AM and two FM stations. Ultimately, I was willing to go along because such levels of ownership will be allowed only in the very largest markets and will be subject an audience cap of 25 percent. Additionally, the Mass Media Bureau will prepare an annual report on the effect of these changes, and we will be able to revisit the question of duopoly limits, if it becomes necessary.

There undoubtedly will be spirited disagreements about the final choices we have made, just as there were among all the Commissioners who chose to participate in the extensive internal debates in this proceeding. To critics, I would simply suggest that a good starting point for discussion would be to indicate what makes one policy choice inherently more reasonable than another.

The one point about which all agree is that the radio industry is in bad shape. There may be many causes for this, but to debate them and point fingers is not very productive. We have been considering the volumes of comments in this proceeding for most of a year and the time to act is upon us.

I may not be entirely comfortable with our choice, but I am completely at ease with the honest, open and thorough process by which we reached it.



March 12, 1992

STATEMENT OF  
COMMISSIONER ERVIN S. DUGGAN

In Re Revision of Radio Rules and Policies (MM Docket No. 91-140)

This Commission has a mandate from Congress to regulate broadcasting in the public interest. Perhaps no mass media service under our jurisdiction has been as historically, fundamentally close to that interest--- to the communities and towns of this country--- as radio. Yet, over the course of this proceeding, it has become abundantly clear to me that the face of the radio industry is changing dramatically and permanently--- and that the ability of radio to continue to serve the public interest is suffering as a consequence. The actions we take today are a moderate attempt to deal with these sea changes and, ultimately, to help a stable and profitable radio industry continue to provide the programming, news and community service that we have long expected from it.

In recent weeks, nearly 80 sets of comments have arrived in my office supporting changes in the Commission's radio ownership rules: comments from such places as North Beverly, Massachusetts, East Lansing, Michigan, Lufkin, Texas and Sacramento, California. The great majority were not the impeccably written, extensively footnoted, word-processed products of large law firms. Often, they were often simple two- and three-page letters. Were they part of an organized campaign? Perhaps many were. But they were not the standard canned argument.

These comments, rather--- all of which were added to the record in this docket--- were often poignant and persuasive pleas for regulatory change from stations that are struggling to serve their audiences in an increasingly beleaguered radio marketplace.

One such plea came from the Chairman of station WNUS in Belpre, Ohio, whose letterhead read, with a note of pride, "Radio Gets Results!. . .Serving the Parkersburg, WV/Marietta-Belpre, Ohio Market." "I have been in the business of owning and operating Radio Stations for the past thirty years," the letter read. "In all of that time, I have never experienced the dilemma that each and every broadcaster is experiencing today.

"All markets, large and small," it continued, "face the very same problem of too many facilities. The smaller markets are suffering a disproportionate hardship because of the lack of advertising dollars... too many stations... not enough advertising dollars to go around. What has been a fairly stable



industry in the past has turned into a day-to-day survival game... [T]he station that goes into Chapter 11 last is the winner."

The consequences? "The base premise of 'community service,' " the writer said, "becomes increasingly difficult to perform without the assistance of talented people to execute these programs on a daily basis. Talent costs money."

A group owner in Indiana wrote: "The loser in this [crisis] is obviously the public. . . . Stations can't afford a local news staff. Stations can barely pay the minimum number of people to keep the station on the air, let alone a local news staff. . . . What a shame to harm the public in this manner," he said.

"Those in our government who would scoff at such examples and scoff at the utter seriousness of this situation are shortsighted, indeed. The crisis is real and it is now."

I cite these letters not simply because they are so clearly genuine or so compelling, although certainly they are both. I do so because they accurately represent the gravamen of the comments received in this docket supporting meaningful changes in the Commission's radio ownership rules as a means of addressing these severe challenges. The comments cut across groups, individual stations, small markets, large markets, trade associations, brokers, banks and former broadcasters. In the aggregate, they tell the story of an American audience that is increasingly ill served when much of the radio industry that serves the public must struggle just to survive.

Unfortunately, these listeners do not have a powerful lobbying group keeping them informed of these problems and pressing their interests at the FCC. But I strongly believe that if they fully understood the depth and permanency of the structural erosion of the industry, they, too, would have flooded us with calls for action. It is their long-term interests that I have foremost in mind in moderating some of the FCC's structural rules affecting ownership in the radio industry.

The statistics that piled up during this proceeding dramatically underscore the anecdotal evidence. The FCC's Mass Media Bureau found that half or more of the nation's 10,000 commercial radio stations lost money in 1990. Average AM profits dropped by half; average FM profits dropped by fully a third. One half of one percent of all stations accounted for 50 percent of the industry's profits in 1990.

These numbers are alarming. They are not merely an artifact of the current recession. On the contrary, we found



that they arise from a trend that began in the mid-1980s and has not abated. The industry's financial base is rapidly eroding, spurred both by the glut of stations and aggressive new competitors, including cable. Cable advertising sales reached \$3 billion in 1991, an 18 percent increase from the previous year. Most broadcasters now view their local cable systems--- which are undeniably a fixture of the mass media landscape--- as their primary competitor for local advertising dollars. These competitive forces are here to stay.

So there we have it: The numbers and the comments in the record support the conclusion that stations across the nation cannot continue to serve their communities under current conditions. This fundamental truth provides the foundation for our actions today.

I must say, however, that the solutions advocated by many struck me as extreme. Some recommended abolishing the national ownership limits. Some called for radical reform of the local ownership rules, including a no-holds-barred approach to the ownership of as many AM and FM stations in a single market as any owner could achieve.

The guiding principle for me throughout this proceeding, however, has been to find a solution that would bring significant progress without endangering the Commission's traditional goals of localism and diversity: an incremental approach, not radical and dangerous surgery. I believe incremental change in the ownership rules is important for two reasons. First, as the foregoing comments illustrated, we can now see some decidedly unwelcome results of radical actions in the past. Perhaps the best example is Docket 80-90, which added nearly 700 new FM stations across the country. We have seen that 80-90, however well-intentioned, was an economic disaster for the industry. While the FCC, perhaps, could not have completely foreseen the consequences, the result convinces me that precipitous regulatory change, even when undertaken in the name of competition and economic growth, is much more complicated than we can fully anticipate. Better, then, to go carefully.

A second point is that we cannot yet predict the impact of oncoming new technologies like DAB and multichannel cable radio. These forces are likely to have an even more profound effect on the equilibrium of the radio industry and on the important public interest goal of localism. Thus--- although a significant part of the record argued for it, and our own Mass Media Bureau appeared to endorse it--- I never believed that decimating the ownership rules would be wise.

At the other extreme, some favored clinging to the status quo. They urged us to freeze the existing rules, or to make





changes so small as to be largely symbolic. Neither of these options, in my view, would allow the industry to rejuvenate itself in a way that would lift every boat.

Fortunately, the Commission in its action today has steered a course between radical change and regulatory paralysis. The new rules we adopt today hew closely to a structure that I favored from the outset of the Commission's discussions of these issues. They reflect an extended, serious dialogue among the Commissioners--- one that Chairman Sikes actively promoted in a process of consensus-building. His role in crafting these rules was crucial, and he is to be commended for the leadership he demonstrated throughout the process.

The Report and Order represents a genuine victory for the public interest. It is the essence of measured change: a reasonable relaxation of the rules, not a destructive explosion of them. Today the Commission acts in a way that is true to the record and true to the principle of incrementalism. Our actions do not gut either the national ownership caps or the duopoly limits, which are particularly vital, in my judgment, to maintaining diversity, local community service and healthy competition. Our actions also feature significant new standards for time brokerage or "local market" agreements, which I feared were out of control and threatened a mockery of our ownership policies. I believe that our new rules clearly signal that the FCC strongly prefers to encourage ownership over LMAs, and that licensees who enter into such arrangements must, as trustees of the public interest, retain full editorial, financial and managerial control of their stations.

Our rules must operate in the real world. As part of our actions today, we make a definitive commitment to undertake an annual real-world review of the results of our rule changes. We direct the Mass Media Bureau to prepare and present to the full Commission a yearly study of the impact of the rules on competition, diversity and minority ownership. As part of that process, we will carefully monitor market shares of both national and local radio combinations, and the Bureau will recommend any Commission response that may be appropriate. I strongly supported including such a provision. I view it as crucial. I believe that the FCC is under a heavy burden to prove itself faithful to its own goals of competition, local service and diversity in the radio industry, and the review will help us to remain so.

In particular, I will treat the annual report as a recurring summons to promote minority participation in broadcasting. If our actions today should prove to have any negative effect on minority ownership, I will insist that we take swift and effective remedial action. Our rule changes must



encourage opportunities for expanding minority broadcast interests, and we must be vigilant to ensure that those opportunities are realized.

Finally, I would note that only two-thirds of the "12-12-12" rule is revised today. While the Commission's current Inquiry into the state of the video marketplace raises the possibility that we might reexamine the last "12," I would simply underscore that the nation's radio and television marketplaces are different in many fundamental ways. Entirely distinct concerns would drive any proceeding dealing with television ownership rules. Thus, while I support the reforms we adopt in this Report and Order, no one should draw the automatic conclusion that our actions here implicate in any way the issues raised in the video Inquiry.

In this action--- so feared by many, so urgently desired by others--- we navigate prudently between the Scylla of deregulatory excess and the Charybdis of inaction. What we do--- both process and result--- will be scrutinized, as it should be. I believe that it will withstand that scrutiny as an example of significant, but prudent, change undertaken for the benefit of the American public.

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